200

SUPREME COURT OF THE UNITED STATES.

No. 33.

LESSEE OF STEPHEN SICARD ET. AL., PLAINTIFF IN ERROR,

VERSUS

JOHN CECIL AND ROBERT SMITHERS.

IN ERROR TO THE CIRCUIT COURT U. S. FOR THE KENTUCKY DISTRICT.

INDEX.

	Original.	Print.
Citation	1	2
Duplicate citation	3	2
Writ of error	5	3
Bond	7	3
Nar. in ejectment	9	4
Notice	10	4
Appearance of defendants; lease, entry and ouster confessed; plea of not guilty and issue	11	5
Amended declaration	16	7
Verdict and judgment	19	8
Bill of exceptions	19	9
Patent to Joseph Phillips	21	10
Exhibit A, deed from Joseph Phillips to Benjamin Stephens	22	10
Deed from Benjamin Stephens to Samuel R. Marshall and ux	25	12
Deed from Marshall and ux. to Stephen Sicard	29	14
No. 1, affidavit of Stephen Sicard	31	15
2, receipt of Parker for three deeds, &c	32	16
3, deposition of Thomas Wallace	33	16
4, affidavit of Alexander Parker	33	17
6, deposition of Mary Powell	84	17
" of Joseph Spencer	36	18
" of Abraham Tenbrook	38	19
" of George Heyl	41	20
9, " of George Rozell	43	22
" of Benjamin Tucker	45	23
10, Recorder's certificate of births and burials	47	24
Deed, Phillips to Stephens	47	24
Stephens to Marshall and ux	50	26
Marshall and ux. to Sicard	53	27
Instructions, marked I	57	29
Clerk's certificate	58	30

UNITED STATES OF AMERICA, } sct.
Seventh Circuit, Kentucky District, }

To Nancy Davis, Jesse Pool, Walter Bayne, John Redmond, David Lefflin, and Cornelius Berdine, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington City, on the second Monday in January next, pursuant to a writ of error filed in the Clerk's office of the circuit court of the United States for the district of Kentucky, wherein the lessee of Stephen Sicard, James W. Stephens, Joseph Phillips, Elizabeth Phillips, John Phillips and Mary his wife, Martha and Frances Phillips, Edward Yard and Abagail his wife, Marshall and Rachael his wife, and Bertrude Stephens, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said lessee as aforesaid, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness my hand, as judge of the district of Kentucky, and one of the judges of the seventh circuit court of the United States, in and for the district of Kentucky, this 17th day of July, A. D. 1829.

JOHN BOYLE, *J. D. K.*

Walter Bayne, John Redman, and Cornelius Berdine, dead; Jesse Pool, not found: executed on Nancy Davis and David Lefflin.

Mileage, 42 miles - - -	$2 10
Service, 2 defendants - - -	4 00
	$6 10

ANDREW M. CLARK, *Dep. Mar. for*
John M. McCalla, M. K. D.

UNITED STATES OF AMERICA, *ss.*

To Nancy Davis, Jesse Pool, Walter Bayne, John Redmond, David Lefflin, and Cornelius Berdine, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday in August next, pursuant to a writ of error filed in the Clerk's office of the circuit court of the United States, for the district of Kentucky, wherein the lessee of Stephen Sicard, James W. Stephens, Joseph Phillips, Elizabeth Phillips, John Phillips and Mary his wife, Martha and Frances Phillips, Edward Yard and Abigail his wife, Marshall and Rachael his wife, and Bertrude Stephens, is plaintiff in error, and you are defendants in error, to show cause, if any there be, why judgment rendered against the said lessee as aforesaid, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Robert Trimble, associate justice of the Supreme Court of the United States, the second Monday in January, A. D. 1828.

ROBERT TRIMBLE.

261.

UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Judges of the circuit court of the United States for the district of Kentucky, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you or some of you, between the lessee of Stephen Sicard, James W. Stephens, Marshall and Rachael his wife, James Brisben and Mary Lucy his wife, Bertrude Stephens, Joseph Phillips, Elizabeth Phillips, John Phillips and Mary his wife, Martha Phillips and Frances Phillips, Edward Yard and Abigail his wife, plaintiff, and Nancy Davis, Jesse Pool, Walter Bayne, John Redmond, David Lefflin, and Cornelius Berdine, defendants, a manifest error hath happened, to the great damage of the said the lessee of Stephen Sicard and others, as by his complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of August next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable John Marshall, Chief Justice of the said Supreme Court, this second Monday of January, in the year of our Lord one thousand eight hundred and twenty-eight.

WM. THOS. CARROLL,
Clk. Sup. Ct. U. S.

Know all men by these presents, that we, John T. David, Andrew Curcier, and Joseph R. Purdon, all of the City of Philadelphia, merchants, are held and firmly bound unto Nancy Davis and others, in the full and just sum of two hundred dollars, current money of the United States, to be paid to the said Nancy Davis and others, their certain attorney, executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this sixth day of March, in the year of our Lord one thousand eight hundred and twenty-eight.

Whereas lately, at a circuit court of the United States for the district of Kentucky, in a suit depending in said circuit court, wherein the lessee of Stephen Sicard and others was plaintiff, and Nancy Davis and others were defendants, judgment was rendered against the said lessee of Stephen Sicard and others, plaintiff, and the said lessee, the plaintiff, obtained a writ of error, and filed a copy thereof in the clerk's office of the said circuit court to reverse the judgment in the aforesaid suit, and a citation directed to the said Nancy Davis and others, citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington the first Monday of August next:

Now the condition of the above obligation is such, that if the said lessee of Stephen Sicard and others shall prosecute his writ to effect, and answer

all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

JOHN T. DAVID, [L. S.]
ANDREW CURCIER, [L. S.]
JOS. R. PURDON, [L. S.]

Sealed and delivered in presence of
SAMUEL G. WALKER.

I believe these sureties to be sufficient. Philadelphia, March 7, 1828.
D. CALDWELL, *Clk. Cir. Ct. Pa.*

Pleas before the honorable Robert Trimble, one of the Judges of the seventh circuit court of the United States of America, in and for the district of Kentucky, held at the Capitol in the town of Frankfort, at the October term of said court, in the year 1824.

Be it remembered, that heretofore, to wit, on the first day of May, in the year of our Lord one thousand eight hundred and fifteen, came John Doe, on the demise of Stephen Sicard, by his attorney, into the Clerk's office of the court aforesaid, and filed the following declaration in ejectment against Richard Roe, that is, John Cecil and others, to wit:

United States, seventh circuit, Kentucky district, to wit: John Doe, a citizen of the Commonwealth of Pennsylvania, complains of Richard Roe, a citizen of the Commonwealth of Kentucky, in custody, &c., of a plea of trespass in ejectment, wherefore with force and arms, &c. &c. For that whereas the said plaintiff says, that, on the first day of February, in the year 1815, at , in the circuit and district aforesaid, Stephen Sicard had demised to him 6,680 acres of land, with the appurtenances, situate, lying and being in the circuit and district aforesaid, to have and to hold the said 6,680 acres of land, with the appurtenances, to the said plaintiff and his assigns, from the 30th day of January then last past, to the full end and term of twenty years from thence next ensuing, and fully to be complete and ended: by virtue of which said demise, the said plaintiff, on the 2d day of February, entered into the said 6,680 acres of land, with the appurtenances, and was thereof possessed, and being so possessed thereof, the said defendant, afterwards, to wit, with swords, &c., entered into the said 6,680 acres of land, which the said Stephen had so demised to him for a term which is yet unexpired, and ejected him, the said plaintiff, out of his said farms, and other wrongs to him then and there did, against the peace and dignity of the United States, and to his damage $10,000, and therefore he sues, &c. &c. Pledges, &c. &c.

JS. HUGHES, *At. for the plaintiff.*

To Messrs. John Cecil, John Scott, Robert Smithers and Joseph Bird, citizens of the Commonwealth of Kentucky, tenants in possession of the premises, or some part thereof. I am informed that you are in possession of, or claim title to, the premises in this declaration of ejectment mentioned, or some part thereof; and I being sued in this action as casual ejector, and having no right or title to the same, do advise you to appear at the next May term of the circuit court of the United States for the Kentucky district, to be held at Frankfort, on the first day of the said term, and then and there, by a rule to be made of the said court, cause yourselves to be made defendants in my stead, otherwise I shall suffer judgment to be entered by default, and you will be turned out of possession.

Yours, &c.
February 20, 1815. RICHARD ROE.

262.

On the 9th day of March, 1815, I delivered to John Cecil and Robert Smithers, each, a copy of this declaration in ejectment and notice; left with the wife of John Scott, at his residence, a copy for him; left with the wife of Joshua Bird, at his residence, for him.

JA. CLARKE, *D. for*
Ro. Crockett, M. K. D.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1815, came John Cecil and Robert Smithers, by their attorney, and, on their motion, it is ordered that they be admitted defendants separately, each for themselves, instead of Richard Roe, the casual ejector; that they will immediately appear to the plaintiff's action, confess the lease, entry and ouster in the declaration supposed, and plead thereto not guilty, and agreed to insist upon the title only at the trial; and it is further ordered, that, if upon the trial of the issue, a verdict should be given for the defendants, or the plaintiff should not further prosecute for any other cause than the not confessing the lease, entry and ouster, that the lessor of the plaintiff should pay the costs of this prosecution, if the plaintiff himself does not pay them; whereupon the defendants, by their attorney, confessed the lease, entry and ouster in the declaration supposed, and agreed to insist upon the title only at the trial, and severally say that they are in no wise guilty of the trespass and ejectment as the plaintiff against him has declared, and of this they put themselves upon the country; and the plaintiff likewise; therefore let a jury come, &c.

And it appearing to the satisfaction of the court from the marshal's return, that the other tenants in possession, John Scott and Joshua Bird, have been regularly served with a copy of the plaintiff's declaration and notice thereon written, and they failing to appear and plead to the plaintiff's said action, though solemnly called, came not, but made default; it is therefore ordered, that unless they appear here on the first day of the next term of this court, and cause themselves to be made defendants herein, receive a declaration in a plea of trespass and ejectment, confess the lease, entry and ouster therein supposed, and plead thereto, or that, on failure thereof, judgment will be entered against Richard Roe, the casual ejector, and the writ of habere facias possessionem awarded the plaintiff; and it is further ordered, that the surveyor of county do go on the land in controversy between the parties, on the day of next, if fair, if not, on the next fair day, and then and there survey and lay off the same, as either party may direct, having due regard to all deeds and other evidences that may be produced, report all matter of fact specially, and return one fair plat and certificate thereof in the Clerk's office of this court thirty days at least before the day of trial; and the marshal, or one of his deputies is directed to attend the said survey, to remove force, should any be offered.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1817, (until which time this cause was regularly continued,) on motion of the plaintiff, by his attorney, it is ordered, that he have leave to take depositions generally before any alderman in the city of Philadelphia, upon giving to the adverse party legal notice of the time and place of taking the same; and further proceedings herein are continued until the next term of this court.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1818, came the defendants, by their attorney, and the plaintiff being solemnly called, came not, but made default, nor is his suit further prose-

cuted. It is therefore considered by the court that the plaintiff be nonsuited, and that the defendants go hence without day, and recover of the lessor of the plaintiff their costs about their defence in this behalf expended.

And at a subsequent day of the same term came the plaintiff herein, by his attorney, and moved the court to set aside the nonsuit entered up herein at a former day of this term, which motion it is ordered to be continued until the next motion day. At which time, to wit, at a subsequent day of the same term, came the plaintiff, by his attorney, and the court being now sufficiently advised of and concerning his motion, do adjudge and order that the nonsuit entered up at a former day of this term be set aside, and the said suit reinstated on the issue docket for trial; and further proceedings herein is continued until the next term of this court.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1820, (until which time this cause was regularly continued,) came the defendants, by their attorney, and the plaintiff, although solemnly called, came not, neither is his suit further prosecuted. It is therefore considered by the court, that this suit be dismissed for the want of prosecution, and that the defendants go hence without day, and recover of the plaintiff their costs by them about their defence herein expended.

And afterwards, to wit, at a subsequent day of the term last aforesaid, in the year last aforesaid, came the plaintiff herein, by his attorney, and moved the court to set aside the nonsuit entered up herein at the present term, but the court, not being sufficiently advised thereon, took time, &c.

And afterwards, to wit, at a subsequent day of the term last aforesaid, in the year last aforesaid, the court being now sufficiently advised of and concerning the motion made by the plaintiff to set aside the nonsuit entered herein at the present term, do order that the same be set aside. It is further considered by the court, that the defendants recover of the lessor of the plaintiff their costs by them herein expended at the present term.

And on motion of the plaintiff aforesaid, by his attorney, it is ordered that this suit be continued until the next term: therefore, it is considered by the court that the defendants recover of the lessor of the plaintiff their cost occasioned by reason of this continuance.

And afterwards, to wit, at the May term of the court aforesaid, in the year 1821, came the parties, by their attorneys, and thereupon came a jury, to wit: Willis A. Lee, Luke Munsell, Thomas Y. Bryant, John Watts, Wm. B. Summers, John Richardson, Jesse Richardson, Richard Blanton, Wm. Owen, Samuel Conner, Henry Blunt and Andrew Hamilton, who, being sworn to try the issue joined, and the plaintiff failing to prosecute this suit, it is ordered that he be nonsuited, and that the defendants go hence without day, and recover of the lessor of the plaintiff their costs herein expended; and, on motion of the plaintiff's attorney, the nonsuit is set aside, and leave is given him to take the depositions of John Phillips, Samuel Robert Marshall, Joseph Spencer, Benjamin Powell, and George Heyl, de bene esse, before any two justices of the peace, notary public, or mayor of any city, upon giving to the adverse party legal notice of the time and place of taking the same; and further proceedings are continued for the plaintiff until the next term. It is therefore considered that the defendant, Robert Smither, recover of the lessor of the plaintiff his costs at the present term expended.

And afterwards, to wit, at the November term of the court aforesaid, in he year last aforesaid, came the plaintiff aforesaid, by his attorney, and it

203.

appearing to the satisfaction of the court, that the common order has been duly served on the tenant Joshua Bird, and he still failing to appear and plead to the plaintiff's said action, although solemnly called, came not; it is therefore considered by the court, that the plaintiff recover of Richard Roe, the casual ejector, the tenement in the declaration mentioned, with the appurtenances thereto belonging, and the writ of habere facias possessionem is awarded the plaintiff; whereupon came the tenant, John Scott, by Robert Smithers, his landlord, by counsel, and, on his motion, it is ordered that the common order entered up against the said Scott is set aside, and the said Smithers is admitted a defendant instead of the said Scott, and receives a copy of the plaintiff's declaration, admits the lease, entry and ouster, and agrees to insist upon the title only at the trial; and says that he is in no wise guilty of the trespass and ejectment as the plaintiff against him has declared, and of this he puts himself on the country; and the plaintiff likewise; therefore, let a jury come, &c. And, on motion of the plaintiff, leave is given to take the deposition of Achilles Sneed, de bene esse, before any one justice of the peace, upon giving to the adverse party legal notice of the time and place of taking the same; and it is further ordered that James Haggin be received as security in the room of James Finley, which is done accordingly; whereupon came a jury, to wit, Allen F. Macurdy, Henry Speed, Andrew F. Price, Nathaniel Richardson, Daniel J. Stephens, John Speed, Evan Evans, Matthew Clarke, John Patrick, Richard Blanton, Charles Mills, and John B. Russell, who, being elected, tried, and sworn well and truly to try the issue joined, but there not being time to go through the cause, the jury was adjourned until to-morrow morning ten o'clock; at which time the jury sworn in this cause appeared agreeably to adjournment, and, by consent, a juror is withdrawn, the balance of the jury are discharged from rendering a verdict herein.

And afterwards, to wit, at a subsequent day of the term and year last aforesaid, on motion of the plaintiff's attorney, leave is granted him to amend the declaration herein, by laying a demise in the name of the heirs of the original patentee of the Commonwealth, or intermediate grantees, on or before the 20th day of January next, and the cause still to stand on the docket for trial at the next term: and, on the further motion of the plaintiff, leave is given him to take the depositions of John Phillips, Samuel Robert Marshall, Joseph Spencer, Benjamin Powell, and George Heyl, de bene esse, upon giving to the adverse party legal notice of the time and place of taking the same, which depositions may be taken before any two justices of the peace, notary public, or mayor of any city; which amended declaration is in the words following: And whereas afterwards, to wit, on the day and year aforesaid, in the circuit aforesaid, James W. Stephens and Marshall and Rachael his wife, and James Brisben and Mary Lucy his wife, and Bertrude Stephens, all citizens of the State of New York, and Joseph Phillips and Elizabeth Phillips, and John Phillips and Mary his wife, and Martha Phillips, and Frances Phillips, and Edward Yard and Abagail his wife, all citizens of the State of New Jersey, each, by several and distinct leases, except that the said feme coverts united with their respective husbands, granted, demised, and let to the said John Doe, a certain tract of land, situate, lying and being on the waters of Chaplins, containing by estimation thousand acres, a part thereof being wood land, a part meadow, a part pasture, a part arable, and a part orchard, to have and to hold by the said John Doe for and during and until end and term of fifty years then next ensuing, fully to be complete and ended.

And afterwards, to wit, at the November term of the court aforesaid, in the year 1822, (until which time this cause was continued,) came the parties, by their attorneys, and, on motion of the plaintiff, leave is given to strike out of the declaration the name of Benjamin H. Stephens, one of the lessors of the plaintiff; and thereupon came a jury, to wit, William Taylor, Francis P. Blair, Joseph Kennedy, Squire Grant, Peter Kinder, James Thompson, Levi Tyler, John Kennedy, Andrew Hamilton, Jesse Mills, Daniel R. Southard, and Lewis Craig, jr., who were elected, tried, and sworn well and truly to try the issue joined, but there not being time to go through the cause, the jury was adjourned until to-morrow morning ten o'clock; at which time the jury sworn in this cause appeared, agreeably to adjournment, but there not being time to go through the trial of the cause, they were again adjourned until to-morrow morning ten o'clock; at which time the jury sworn in this cause appeared, agreeably to adjournment, but there not being time to go through the trial, they were adjourned until to-morrow morning ten o'clock; at which time the jury sworn in this cause appeared, agreeably to adjournment, and the argument of counsel being heard, the jury retired to consider of their verdict. And at a subsequent day of the same term, the jury sworn in this cause appeared in court, and, not agreeing in a verdict, by consent of counsel a juror is withdrawn, and the balance of the jury discharged from rendering a verdict.

And afterwards, to wit, at a subsequent day of the same term, came the plaintiff, by his attorney, and, on his motion, leave is given him to amend the surveyor's report herein. It is therefore ordered that the surveyor of Nelson or Franklin county do go on the land in controversy between the parties, on the day of next, if fair, if not, then on the next fair day, and then and there lay off and survey the same, as either party may direct, having due regard to all deeds and other evidences that may be produced, report all matters of fact specially, and return one fair plat and certificate thereof into the Clerk's office of this court thirty days at least before the day of trial; and the marshal, or one of his deputies, is directed to attend the said survey, to remove force, should any be offered.

And afterwards, to wit, at the October term of the court aforesaid, in the year 1824, (until which time this cause was regularly continued,) came the parties, by their attorneys, and thereupon came a jury, to wit: Joseph D. Hamilton, William Hunter, Langston Bacon, Joseph Sunnall, Charles Buck, J. T. Drake, Thomas Morseley, Robert Johnson, Henry C. Gist, Matthew Clarke, Gruas E. Russell and Roger Divine, who, being elected, tried, and sworn to try the issue joined, but there not being time to go through the cause, the jury was adjourned until to-morrow morning ten o'clock; at which time the jury sworn in this cause appeared, agreeably to adjournment, but there not being time to go through the trial, the jury was adjourned until to-morrow morning ten o'clock; at which time the jury sworn in this cause appeared, agreeably to adjournment, and returned into court the following verdict: "We of the jury find for the defendants." It is therefore considered by the court that the defendants go hence and recover of the lessors of the plaintiff their costs herein expended.

And afterwards, to wit, at a subsequent day of the term and year last aforesaid, ordered, that the judgment entered up herein at a former day of this term be set aside, and re-entered on to-day, to wit, the jury sworn in this cause appeared, agreeably to adjournment, and returned into court the following verdict: "We the jury find for the defendants." It is therefore

204.

considered by the court, that the defendants go hence and recover of the lessors of the plaintiff their costs herein expended; whereupon the plaintiff tendered to the court the following bill of exceptions, which, being signed and sealed, is ordered to be entered of record, to wit:

Be it remembered, that, on the trial of this cause, the plaintiff gave in evidence to the jury the patent to Joseph Phillips, in the words and figures following, (here insert it,) and proved that it covered the land in controversy, and the defendants were in the adverse possession at the time of the commencement of this suit. The plaintiff also offered in evidence the following copies of deeds, and their testimonials, (here insert the deed from Phillips to Stephens, from Stephens to Marshall, and from Marshall to Sicard marked A,) reading the affidavit of Sicard in the words and figures following, (here insert it, marked 1,) and the receipt of Parker to Sicard as followeth, (here insert it, marked 2,) and the affidavit of Alexander Parker and Thomas Wallace, the contents of which were admitted as if proved orally in court in the words and figures following, (here insert them, marked 3 and 4,) and the depositions of Mary Powell, Joseph Spencer, Abraham Tenbrook, and the deposition of George Heyl, and the deposition of George Rozell, and deposition of Benjamin Tucker, which depositions were taken in due form, and read in the words and figures following, to wit, (here insert the depositions, marked 5, 6, 8, 9,) and the Register's certificate in the words following, (here insert it, marked 10,) and the plaintiff produced in court the record of deeds from the office of the court of appeals, containing the following deeds and certificates, (here insert them, with the Clerk's certificate,) and the Clerk being sworn as a witness, stated that the deeds had been recorded by Thomas S. Hind, his deputy, now living beyond the reach of the process of this court, but he recollected to have noticed them at the time, and they had, so far as he recollected, every appearance of genuine documents; and the plaintiff also introduced Ralph Phillips, who stated that he was long acquainted with Joseph Phillips, and Stephens and Marshall, and he heard them speak of conveyances of the tract of land in controversy by Phillips, by Phillips to Stephens, and by Stephens to Marshall, many years ago, but he does not recollect to have seen the deeds. He proved that Phillips and Stephens, and Marshall and Sicard, had always resided in Pennsylvania, New York or New Jersey. Those deeds were shown to cover the land in controversy. It appearing likewise that Phillips and Stephens both died in the year 1798 or 1799. The defendants gave in evidence patents of the Commonwealth, from the Commonwealth, of junior date to that read by plaintiff, proved the boundaries of those junior grants, and that they include the defendants, and gave evidence that they had settled under faith of those junior patents, and held adversely to the patent offered in evidence by the plaintiff.

On motion of the defendants, the court rejected the copies of the deeds from Phillips to Stephens, and from Stephens to Marshall, and from Marshall to Sicard, because there was no proof of the execution of the deeds from Phillips to Stephens, or from Stephens to Marshall, so as to let in copies of the original deeds. The defendants then proved, that, in the year 1794, they had adverse possession of the lands in controversy, and had continued ever since to hold it adversely accordingly: whereupon the defendants moved the court to instruct the jury as follows: (here insert those instructions of October term 1824, I) which instructions were given accord-

ingly. To each of which decisions and instructions, as well in excluding as in instructing the jury, the plaintiff excepts, praying, &c.

ROBERT TRIMBLE, [L. S.]

The following are copies of the papers referred to as a part of the foregoing bill of exceptions, to wit:

(Patent to Joseph Phillips, to wit:)

Patrick Henry, Esq., Governor of the Commonwealth of Virginia, to all to whom these presents shall come, greeting: Know ye, that, by virtue and in consideration of a treasury warrant, No. 18,343, issued the sixth day of August, 1783, also, by virtue of part of a treasury warrant No. 16,293, issued the 12th day of May, 1783, there is granted by the said Commonwealth unto Joseph Phillips, a certain tract or parcel of land, containing six thousand six hundred and eighty acres, by survey bearing date the 4th day of May, 1784, lying and being in the county of Jefferson, on the north side of Chaplin's fork, adjoining William Kincheloe's 400 acre survey, Messrs. Ramsey and Coxe and others, and bounded as followeth, to wit: beginning at three beeches standing on the north bank of said Chaplin's fork, being also southwest corner of Ramsey and Coxe's 21,000 acre survey, running thence north 560 poles, with their line, to two beeches and a hickory, thence west 1,467 poles to two beeches, thence north 181 poles to a sugar tree and beech, thence west three hundred and eighty poles to an elm and beech, thence south 181 poles to a beech and dogwood, thence east 20 poles to a sugar tree and dogwood, northeast corner to Kincheloe's 400 acre survey, thence south 253 poles, the lines of said survey, to two honey locusts, thence west 253 poles to an elm and beech, thence north 253 poles to three beeches, northwest corner of said survey, thence west 20 poles to three beeches, thence south 980 poles to a sugar tree, beech, and poplar, on the north bank of Chaplin's fork, thence up said fork along the meanders thereof, and binding thereon, to the beginning, with its appurtenances. To have and to hold the said tract or parcel of land, with its appurtenances, to the said Joseph Phillips and his heirs for ever. In witness whereof, the said Patrick Henry, Esq., Governor of the Commonwealth of Virginia, hath hereunto set his hand, and caused the lesser seal of the said Commonwealth to be affixed, at Richmond, on the sixth day of June, in the year of our Lord one thousand seven hundred and eighty-six, and of the Commonwealth the tenth.

P. HENRY. [L. S.]

Joseph Phillips is entitled to the within mentioned tract of land.

JOHN HARVEY, *Reg. L. Office.*

(Deeds, marked A.)

This indenture, made this sixteenth day of October, in the year of our Lord one thousand seven hundred and ninety-seven, between Col. Joseph Phillips, of the township of Maidenhead, in the county of Hunterdon, and state of New Jersey, of the one part, and Benjamin Stephens, of the city of Philadelphia, in the Commonwealth of Pennsylvania, of the other part, witnesseth: that the said Joseph Phillips, for the consideration of one dollar, and other good causes me thereunto moving, do grant, bargain, sell and convey unto the said Benjamin Stephens, and to his heirs and assigns, all

205.

that certain tract or parcel of land, lying and being in the county of Nelson, and state of Kentucky, on the north side of Chaplin's fork, adjoining William Kincheloe's 400 acre survey, Messrs. Ramsey and Coxe's, and bounded as follows, to wit: beginning at three beeches standing on the north bank of said Chaplin's fork, being also southwest corner of Ramsey and Coxe's 21,000 acre survey, running thence north 560 poles, with their line, to two beeches and a hickory, thence west 1,480 poles to an elm and beech, thence south 181 poles to a beech and dogwood, thence east 20 poles to a sugar tree and dogwood, northeast corner of Kincheloe's 400 acre survey, thence south 253 poles, with the lines of said survey, to two honey locusts, thence west 253 poles to three beeches, northwest corner to said survey, thence west 20 poles to three beeches, thence south 980 poles to a sugar tree, beech, and poplar, on the north bank of Chaplin's fork, thence up said fork along the meanders thereof, and binding thereon, to the beginning, containing six thousand six hundred and eighty acres of land, (which said tract of land was granted by patent to the said Joseph Phillips, by Patrick Henry, Governor of the Commonwealth of Virginia, on the sixth day of June, one thousand seven hundred and eighty-six, reference thereto being had may more fully appear,) together with all and singular the ways, waters, houses, and every appurtenances whatsoever thereunto belonging, or in any wise appertaining, of, in, and to the same, and every part and parcel thereof, and also all the estate of him, the said Joseph Phillips, either in law or equity, of, in, and to the same; to have and to hold the said premises unto the said Benjamin Stephens, his heirs and assigns, for ever; and the said Joseph Phillips, his heirs, executors and administrators, covenant with the said Benjamin Stephens, his heirs and assigns, that he, the said Joseph Phillips, doth hereby grant all the hereby granted premises, and that he, the said Benjamin Stephens, his heirs and assigns, shall hold and enjoy the said premises without the lawful let or eviction of him, the said Joseph Phillips, his heirs or assigns, or any person or persons whatsoever, lawfully claiming by, from, or under him, or them, or any one of them. In witness whereof, the said Joseph Phillips hath, to these presents, set his hand and seal, the year first above written.

JOSEPH PHILLIPS, [L. S.]

Sealed and delivered in presence of
JOSEPH SPENCER,
SAMUEL ROBERT MARSHALL,
JOHN PHILLIPS.

Received, the day of the date hereof, the full consideration money for the above deed. Witness my hand.

JOSEPH PHILLIPS.

JOSEPH SPENCER,
SAMUEL ROBERT MARSHALL,
JOHN PHILLIPS.

Note.—The above is a true copy of the original, being interlined, between the fifth and sixth lines from the bottom, with the words "to the only proper use of the said Benjamin Stephens, his heirs and assigns," by

CH. SANKEY.

(In the original) *Note.*—The words "he the said Joseph Phillips doth hereby grant all the," in the fifth line from the bottom, were written on an erasure before the execution of these presents.

CITY OF PHILADELPHIA, sct.

On the eighth day of June, anno Domini one thousand seven hundred and ninety-eight, before me, Hilary Baker, mayor of the said city of Philadelphia, in the Commonwealth of Pennsylvania, personally appeared Joseph Spencer, of the said city, merchant, who, being duly sworn, deposeth and saith: that he saw Joseph Phillips, the grantor in the above written indenture named, sign, seal, and, as his act and deed, deliver the above written indenture: that the name "Joseph Spencer" thereunto subscribed, as a witness to the signing, sealing, and delivery thereof, is of his, the said deponent's, proper hand writing, and that he also saw Samuel Robert Marshall and John Phillips severally subscribe their respective names thereunto, as witness to the signing, sealing, and delivery thereof, as aforesaid. In testimony whereof, I, the said mayor aforesaid, have subscribed my name, and caused the seal of the said city to be affixed to these presents the day and year aforesaid.

HILARY BAKER. [L. S.]

On the twentieth day of January, in the year 1803, I, George Heyl, jr., notary public for the Commonwealth of Pennsylvania, do hereby certify and attest, unto all whom it doth or may concern, that the within indenture or instrument of writing is a true and lawful copy of the original presented to me, which copy was duly and carefully compared therewith.

In testimonium veritatis, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

GEORGE HEYL, Jr., *Not. Pub.* [L. S.]

Stephens to Marshall and ux. deed, to wit:

This indenture, the twenty-fifth day of December, in the year of our Lord one thousand seven hundred and ninety-seven, between Benjamin Stephens, of the city of Philadelphia, in the county of Philadelphia, in the state of Pennsylvania, of the one part, and Samuel Robert Marshall and Rachael his wife, of the same place, county, and Commonwealth of Pennsylvania aforesaid, of the other part, witnesseth: That the said Benjamin Stephens, for and in consideration of the just and full sum of five shillings, as well for natural affection and divers other good causes and considerations me thereunto moving, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm, unto them, said Samuel Robert Marshall and Rachael his wife, their heirs and assigns, for ever, all that certain tract or parcel of land, situate, lying and being in the county of Nelson, late part of Jefferson county, state of Kentucky, late part of Virginia, which said tract of land is butted and bounded as followeth: beginning at Wm. Kincheloe's 400 acre survey, Ramsey and Coxe's, and others, and at three beeches standing on the north bank of Chaplin fork, being also southwest corner of Ramsey and Coxe's 21,000 acre survey, running thence north 560 poles, with their line, to two beeches and a hickory, thence west 1,467 poles to two beeches, thence north 181 poles to a sugar tree and beech, thence west 380 poles to an elm and beech, thence south 181 poles to a beech and dogwood, thence east 70 poles to a sugar tree and dogwood, northeast corner to Kincheloe's four hundred acre survey, thence south 253 poles with the lines of said survey to two honey locusts, thence west 253 poles to three beeches, thence south 980

200.

poles to a sugar tree, beech, and poplar, on the north bank of Chaplin fork, thence up said fork along the meanders thereof, and binding thereon, to the beginning, containing six thousand six hundred and eighty acres, (which said tract was granted by the state of Virginia, under the hand and seal of their then Governor, Patrick Henry, on the sixth day of June, in the year of our Lord, 1786, and was conveyed by the said Governor to Joseph Phillips and his heirs, and he, by his deed bearing date the sixteenth day of October, 1797, conveyed the same to Benjamin Stephens, reference to the said deed and patent being had may more fully and at large appear,) together with all and singular the ways, water, water courses, mines, minerals, rights, privileges, and appurtenances whatsoever thereunto belonging, or in any wise appertaining, and also all the estate, right, claim, and demand whatsoever of him, the said Benjamin Stephens, and his heirs in law and equity, of, in, and to the same; to have and to hold all the said premises hereby granted, premises with the appurtenances unto the said Samuel Robert Marshall and Rachael his wife, their heirs and assigns, to their own proper use and behoof, for ever; and the said Benjamin Stephens and his heirs, all the said premises hereby granted, with the appurtenances, unto the said Samuel Robert Marshall and Rachael his wife, their heirs and assigns, against him the said Benjamin Stephens and his heirs, and against all and every other person having or claiming any estate, (except two hundred acres) right, or interest therein, shall warrant and for ever defend.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

BENJAMIN STEPHENS, [L. S.]

Sealed and delivered in the presence of us:

A. VANCLEVE, JR.

BENJAMIN POWELL.

The two hundred acres reserved adjoins William Kincheloe's four hundred acres on the east side.

Received, the day of the date hereof, the full consideration money of Samuel Robert Marshall and Rachael his wife, being in full for the above mentioned deed.

BENJAMIN STEPHENS.

Witness at signing:

A. VANCLEVE, JR.

BENJAMIN POWELL.

A true copy of the original, by CH. SANKEY.

CITY OF PHILADELPHIA, *ss.*

On the fifteenth day of June, anno Domini one thousand seven hundred and ninety-eight, before me, Hilary Baker, mayor of the city of Philadelphia, in the Commonwealth of Pennsylvania, appeared Aaron Vancleve, jr., of the said city, who, being duly sworn, deposeth and saith, that he saw Benjamin Stephens, the grantor in the above written indenture named, sign, seal, and, as his act and deed, deliver the above written indenture; that the name Aaron Vancleve, thereunto subscribed as a witness to the signing, sealing, and delivery, is of his, the said deponent's, hand writing, and that the said Benjamin Powell subscribed his name thereto, as a witness to the signing, sealing, and delivery thereof. In testimony whereof, I, the mayor

aforesaid, have subscribed my name, and caused the seal of the said city to be affixed to these presents the day and year aforesaid.

HILARY BAKER, *Mayor.* [L. S.]

On the seventeenth day of January, in the year of our Lord one thousand eight hundred and three, I, George Heyl, jr., notary public for the Commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Philadelphia, do hereby certify and attest, unto all whom it doth or may concern, that the within indenture or instrument of writing is a true and faithful copy of the original presented to me, which copy was duly and carefully compared therewith.

In testimonium veritatis, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

GEORGE HEYL, Jr., *Not. Pub.* [L. S.]

Marshall and ux. to Sicard, deed, to wit:

This indenture, made the twenty-fifth day of May, in the year of our Lord one thousand seven hundred and ninety-eight, between Samuel Robert Marshall, of the city and county of Philadelphia, in the Commonwealth of Pennsylvania, and Rachael his wife, of the one part, and Stephen Sicard of the other part, witnesseth: that the said Samuel Robert Marshall and Rachael his wife, for and in consideration of the just and full sum of sixteen hundred and thirty dollars, to them in hand well and truly paid, the receipt whereof is hereby acknowledged, and themselves therewith fully satisfied, contented and paid, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm unto him, the said Stephen Sicard, all that tract or parcel of land lying and being in the county of Jefferson, now Nelson county, in Virginia, now Kentucky; which said tract was granted by patent under the hand and seal of Patrick Henry, then Governor of Virginia, which said patent bears date the 6th day of June, 1786, and was granted unto Joseph Phillips, and he, by deed bearing date the 16th day of October, 1797, conveyed the same to Benjamin Stephens, and he, by deed bearing date the 25th day of December, 179[illegible], conveyed the same to Samuel Robert Marshall and Rachael his wife, all of which reference *thereunto belonging*, or in any ways appertaining: beginning at three beeches and standing on the north bank of Chaplin's fork, being also southwest corner of Ramsey and Coxe's 21,000 acre survey, running thence north 560 poles, with their line, to two beeches and a hickory, thence west 1,467 poles to two beeches, thence north 181 poles to a sugar tree and beech, thence west 380 poles to an elm and beech, thence south 181 poles to a beech and dogwood, thence east 20 poles to a sugar tree and dogwood, northeast corner to Wm. Kincheloe's 400 acre survey, thence south 253 poles, with the lines of said survey, to two honey locusts, thence west 253 poles to an elm and beech, thence north 253 poles to three beeches northwest corner to said survey, thence west 20 poles to three beeches, thence south 980 poles to a sugar tree, beech and poplar, on the north bank of Chaplin's fork, thence up said fork along the meanders thereof, and binding thereon, to the beginning, containing six thousand six hundred and eighty acres of land; to have and to hold all the said premises hereby granted, with the appurtenances, unto the said Stephen Sicard, his heirs and assigns, to his and their only proper use and behoof, for ever; and the said Samuel Robert Marshall and Rachael his wife, their heirs, all the said tract of land

207.

and premises hereby granted, with the appurtenances, unto the said Stephen Sicard, his heirs, executors, administrators and assigns, against him, the said Samuel Robert Marshall and Rachael his wife, and their heirs, and against all and every other person or persons lawfully having or claiming any estate, right, or interest therein, shall and will warrant and for ever defend from, by, and under them. In witness whereof, the parties to these presents have hereunto interchangeably set their hands, and affixed their seals thereto, dated the day and year first above written.

SAMUEL ROBERT MARSHALL, [L. S.]
RACHAEL MARSHALL, [L. S.]

Sealed and delivered in presence of us:
A. VANCLEVE, Jr.
BENJAMIN POWELL.

There are two hundred acres of the land reserved, which are situated next to Wm. Kincheloe's 400 acres on the east side.

Received, the day of the date of the above written indenture, of the above Stephen Sicard, the full consideration money as above mentioned.

SAMUEL ROBERT MARSHALL.

A. VANCLEVE, Jr.
BENJAMIN POWELL.
A true copy of the original, by CH. SANKEY.

CITY OF PHILADELPHIA, *ss.*

Before me, Hilary Baker, mayor of the city of Philadelphia, came Samuel Robert Marshall and Rachael his wife, the grantors above named, and acknowledged the above indenture to be their act and deed, and desired the same to be recorded as such; and the woman being examined apart from her husband, acknowledged that she signed the same of her own free will and accord, and that without the threats of her husband or any other person.

In testimony whereof, I, the said mayor, have hereunto set my hand, and caused the seal of the mayoralty of the said city to be hereto affixed, the 19th day of July, in the year of our Lord 1798.

HILARY BAKER, *Mayor.* [L. S.]

On this seventeenth day of January, in the year of our Lord 1803, I, George Heyl, jr. notary public for the Commonwealth of Pennsylvania, duly commissioned and sworn, residing in the city of Philadelphia, do hereby certify and attest, unto all whom it doth or may concern, that the within indenture or instrument of writing is a true and faithful copy of the original presented to me, which copy was duly and carefully compared therewith.

In testimonium veritatis, I have hereunto set my hand and affixed my notarial seal, the day and year above written.

GEORGE HEYL, Jr. *Not. Pub.* [L. S.]

Affidavit of Stephen Sicard, marked No. 1.

CITY OF PHILADELPHIA, *ss.*

Personally appeared before me, Robert Wharton, Esq., mayor of the city of Philadelphia, Stephen Sicard, of said city, gentleman, and being duly sworn according to law, on his solemn oath doth depose and say: that he is advised, and does verily believe, that George Heyl, jr., of the city of Philadelphia, Joseph Spencer, of said city, Samuel Robert Marshall, of the

city of New York, or its vicinity, John Phillips, now or late of New Jersey, Aaron Vancleve, now or late of New York state, and county of Genesee, and Benjamin Powell, of Philadelphia, or such of them as are living, are material witnesses for him in the several ejectments depending and undetermined in the circuit court of the United States for the seventh circuit for the Kentucky district, in which he is lessor of the plaintiff, and Jesse Davis and others are defendants; and, also, in the suit in chancery depending and undetermined in the said court, wherein he is complainant, and May and Curds' heirs and others are defendants.

E. SICARD.

Sworn as above before me. In testimony whereof, I have hereunto set my hand, this 8th day of April, A. D. 1816; the word "March" erased and the word "April" interlined, before the probate was signed by me.

ROBERT WHARTON, *Mayor.*

UNITED STATES OF AMERICA, } sct.
District of Kentucky, }

Issue commissions to take the depositions of the witnesses named in this affidavit, directed to a justice of the peace in and for the county, town, or city, wherever the witness or witnesses reside. Given under my hand, as judge of the said district, this 7th day of June, 1816.

HARVY ENNIS.

JOHN H. HANNA, *Clerk, &c. &c.*

Receipt of Parker, No. 2.

Received, February 9, 1803, of Mr. Stephen Sicard, three deeds for a certain tract of land, lying in the county of Nelson, and state of Kentucky, on Chaplin's fork: the first, Joseph Phillips to Benjamin Stephens, for 6,680 acres of land; the second, Benjamin Stephens to Samuel R. Marshall, for said land; the third, Samuel R. Marshall to Stephen Sicard for ditto; also, a certificate of Ralph Phillips concerning the same: all to be recorded in the office at Frankfort, in Kentucky.

ALEX. PARKER.

Deposition or affidavit of Wallace, marked No. 3.

The deposition of Thomas Wallace, taken in Frankfort this first day of June, 1821, by consent of George M. Bibb, Esq., counsel for the defendants, and James Hagg, Esq., counsel for the plaintiff, to be read in evidence in a suit or suits now depending in the court of the United States, in Frankfort, wherein Stephen Sicard is plaintiff, and Kincheloe and others are defendants, saith, that Mr. Alexander Parker, of Lexington, did say, that, in the summer of 1803, he, said Parker, did leave at the store or deliver to a young man (probably a Mr. Scott) then living with this deponent, sundry papers, said to be deeds, the property of said Sicard, to be carried from Lexington to Philadelphia by this deponent. This deponent knows nothing of the papers, nor does he ever recollect to have seen them. He has made search for them amongst his papers, but cannot find them; he verily believes they were not delivered to him; and further he saith not.

THOMAS WALLACE.

208.

Affidavit of Alexander Parker, No. 4.

To the best of my recollection, I received of Stephen Sicard, in Philadelphia, in February, 1803, three deeds, for a tract of land of 6,680 acres, the first from Joseph Phillips to Benjamin Stephens, the second from said Stephens to Samuel R. Marshall, the third from said Marshall to Stephen Sicard, all for same tract of land, which deeds I believe I receipted for, which I got recorded in the office of the court of appeals, in the following spring, but not certain whether in April or May; some months after they were admitted to record, I was directed by said Sicard to send deeds to him in Philadelphia; sometime between the spring of 1803 and August 1804, I spoke to Mr. Thomas Wallace to carry them to said Sicard, who agreed to take them, and directed me to leave them with his clerk that evening, as he would pack up his papers that said evening. I enclosed said three deeds in a sheet of paper, directed to said Sicard, which I delivered that evening to said Wallace's clerk, which I believe was William Scott, who promised to deliver them to said Wallace, since which I never seen them, but have heard that they were lost. Those deeds I believe to be original, and for land in Nelson county, and I believe on Chaplin's fork; I also paid the taxes on said 6,680 acres of land for several years, and see the entry of said land for taxation in the Auditor's office. I am not certain what become of said William Scott, but I believe that he is deceased, and that he died in Lexington, about twelve or fifteen years ago.

ALEXANDER PARKER.

It is agreed that the above shall be used as testimony in the several cases of Sicard.

BIBB.

Depositions, marked 5, 6, 8, 9.—No. 6.

The deposition of Mary Powell, of the city of Philadelphia, state of Pennsylvania, the attendant of a grocery at No. 106, north seventh street, taken before me, James N. Parker, one of the aldermen of the said city of Philadelphia, on this twentieth day of April, 1822, in four suits depending in the circuit court of the United States for the seventh circuit and district of Kentucky, wherein Stephen Sicard is lessor of the plaintiff, and in one of which Jesse Davis, &c. are defendants; in another of which, John Cecil, &c. are defendants; in another of which, William Morgan, &c. are defendants; and in the fourth of which, Jesse Davis, &c. are defendants.

The said Mary Powell, being of the age of fifty years, and by me carefully examined and cautioned, and sworn to testify the whole truth, on her solemn oath deposeth and saith: That he is not attorney or counsel for either party in the above named suits, nor interested in any way in either of them. That she is the widow of the late Benjamin Powell, of the same city, carpenter. That, as he informed her, her said husband had dealings in his lifetime with doctor Robert Marshall and Benjamin Stephens, of the same place, but these dealings were at a period or periods previous to her becoming his wife, and that, from the same source of information thus obtained, she is fully satisfied her husband, as witness, subscribed a deed to which they, the said Benjamin Stephens and the said Robert Marshall, each, was party, or at least that the said Stephens was the seller therein. That her husband died about two years ago. That, at some time previous to that event, he went on with the late Stephen Sicard, also of the same place, to

attest the fact of his, the said Powell's, having subscribed the said deed as a witness to the execution thereof, before a magistrate, either an alderman or justice of the peace; and, from frequent conversations passing in her presence between the said Stephen Sicard and her said husband, about the said transaction, she is convinced her said husband a perfect recollection of having so witnessed; and at the time of their going out, as above mentioned, that such proof-making was by him completed before one or other such officer; and, lastly, that during the present spring, and on or about the 20th day of March last past, the same Stephen Sicard deceased, as she is informed, and verily believes.

MARY POWELL.

Sworn and subscribed the 20th April, 1822, before me:
JAMES N. BARKER, *Not. Pub.*

CITY OF PHILADELPHIA, COMMONWEALTH OF PENNSYLVANIA, *sct.*

I, James N. Barker, one of the aldermen of the city of Philadelphia, do hereby certify, that the foregoing deposition was taken before me, as in the preamble specified, being entirely written by me in the presence of the witness, and subscribed by her in my presence. I further certify that I am not attorney or counsel for either party, nor interested in either of the suits named; that none of the defendants reside, nor have any agent known to me, within one hundred miles of the place of taking this deposition; the cause of taking which is, that the witness resides more than one hundred miles from the place of holding of the court in which said suits are depending. In testimony whereof, I have hereunto set my hand and seal, the 20th day of April, A. D. 1822.

JAMES N. BARKER, [L. S.]

The deposition of Joseph Spencer, late merchant, of the city of Philadelphia, aged about seventy years, taken before me, James N. Barker, one of the aldermen of the city of Philadelphia, on this 17th day of April, 1822, in four suits depending in the circuit court of the United States for the seventh circuit and district of Kentucky, wherein Stephen Sicard is lessor of the plaintiff, and in one of which Jesse Davis, &c. are defendants; in another of which, John Cecil, &c. are defendants; in another of which, Wm. Morgan, &c. are defendants; and in the fourth of which, Jesse Davis, &c. tenants, &c. are defendants. Joseph Spencer, formerly a merchant of Philadelphia, and now residing therein, being of the age of seventy years, being by me carefully examined and cautioned, and solemnly affirmed to testify the whole truth, on his solemn affirmation saith:

That he has some recollection of having witnessed an instrument of writing, supposed by him to be a conveyance of land, but it not being known to him to whom granted thereby, at the house of Jonathan Phillips, deceased, of Maidenhead, now Lawrence township, Hunterdon county, state of New Jersey, at that place, some twenty years ago or more, and of his meeting again one or more of the family, he believes doctor Joseph Phillips, of that place or neighborhood, in the said county of Hunterdon, was one, in the city of Philadelphia, at the office of Hilary Baker, who was then mayor of the said city, to authenticate the hand writing to the said instrument of as party or witnesses, or both, but has no certain data in his memory, he can be more particular.

JOSEPH SPENCER.

269.

Sworn and subscribed, the 20th of April, A. D. 1822, before me:
JAMES N. BARKER, *Ald.*

CITY OF PHILADELPHIA, COMMONWEALTH OF PENNSYLVANIA, *sct.*

I, James N. Barker, one of the aldermen of the city aforesaid, do hereby certify, that the foregoing deposition was taken before me, as in the preamble specified, being entirely written by me in the presence of the witness, and subscribed by him in my presence. I further certify that I am not attorney or counsel for either party, nor interested in either of the suits named. That none of the defendants reside nor have any agent known to me within one hundred miles of the place of taking this deposition; the cause of taking which is, that the witness resides more than one hundred miles from the place of the holding of the court in which said suits are pending. In testimony whereof, I have hereunto set my hand and seal, this twentieth day of April, 1822.

JAMES N. BARKER.

PHILADELPHIA COUNTY, *sct:*

I, Matthew Randall, prothonotary of the court of common pleas for the city and county of Philadelphia, do certify, that James N. Barker, by whom the above attestation is made, and who has thereto subscribed his name, was at the time of so doing, and still is, an alderman of the said city, duly commissioned and qualified; to all whose acts as such, full faith and credit is and ought to be given, as well in courts of justice as elsewhere. In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Philadelphia, the 20th day of April, A. D. 1822.

MATTHEW RANDALL. [L. S.]

The deposition of Abraham Tenbrook, of the city of Philadelphia, state of Pennsylvania, counsellor at law, taken before me, James N. Barker, Esq., one of the aldermen of the said city, at his office therein, on the twentieth day of April, in the year of our Lord, 1820, in four suits depending in the circuit court of the United States for the seventh circuit and district of Kentucky, wherein Stephen Sicard is plaintiff, and in one of which Jesse Davis, &c. are defendants; in another of which John Cecil, &c. are defendants; in another of which William Morgan, &c. are defendants; and in the fourth of which Jesse Davis, &c., tenants, &c., are defendants. The said Abraham Tenbrook being, as he states, of the age of fifty years and upwards, and by me, the said James N. Barker, carefully examined and cautioned, and sworn to testify the whole truth, on his solemn oath deposeth and saith: that he is not attorney or counsel for either party in the above named suits, or either of them. That, from his own experience of wills depository in the state of New Jersey, as well as other sources of information relating thereto, obtained in the office and elsewhere, the prerogative court's office is the sole one for their keeping, and not the different counties' surrogate office, to which exemplications of the former general office are returned for the carrying on there of the said wills' administration: that such has, he always understood, been the regulation of law there ever since New Jersey became one of the United States, and he is well assured remains unaltered in this feature of the system: that the said deponent was present in the said general office while the Register thereof, Daniel Coleman, Esq., (also and his pre-

decessor in that office exercising, during all the period aforesaid, having held the farther post of the Secretary of the State of New Jersey) searched on the subject contained in his certificate under that office seal of the 12th instant, and that he assisted in the same search: that they commencing it with, as he officially certifies the same search was done, 1797; it was extended thus to the current year by the said Register: that Stephen Sicard, the above stated plaintiff, died the present spring, to wit, on the nineteenth day of March. His widow, Elizabeth Sicard, survived him only until the seventh instant, and that they left the following, and no other issue, to wit: Mary, the wife of John T. David, Julia Sicard, and Eliza Sicard, their three daughters, and son Stephen, in contradistinction from his said father, known as Stephen Sicard, junior, (all four such issue being still alive,) and that the late Stephen Sicard, now deceased, retained until his death, and did, not many months before it, in an argument in which this said deponent was present, defend the propriety of maintaining his early signature, used, as he declared, by him in France, of E. for Etienne, and never, as far as said deponent knows, exchanged it in his name signings for that of Stephen, or its abbreviations in English, of S. Sicard. That major John Phillips, of Hunterdon county, state of New Jersey, a subscribing witness to the deed of the by the aforesaid Coleman certified, of Col. Joseph Phillips, as deceased, is in very bad health, as all whom deponent saw in his way up, forgetting his attestation, and conversed with about him, informed this deponent that said John's precarious situation in this respect admitted of his leaving home, and his deposition was, therefore, by Daniel Cook, Esq., a publicly known, and by all around him understood to be, a commissioned judge of that county of Hunterdon court of common pleas, taken at the said witness's own house, as to the same deeds and attestation by him, the said John; and that the seal of the said county court of common pleas, to the said Cook's being and acting, and duly commissioned such member of the said court, would have required a forty miles extra journeying in order to a procurement of that testimonial at the hand of the clerk having that seals custody at Flemington.

A. TENBROOK.

CITY OF PHILADELPHIA, *ss.*

I, James N. Barker, one of the aldermen of the said city, in the state of Pennsylvania, do hereby certify, that the foregoing deposition was taken before me, as in the preamble is specified, being entirely written and subscribed by the witness in my presence. I further certify that I am not attorney or counsel for either party, nor interested in either of the suits named: that none of the defendants reside, nor have any agent known to me, within one hundred miles of the place of taking this deposition; the cause of taking which is, that the witness resides more than one hundred miles from the place of the holding of the court in which said suits are depending.

Witness my hand and seal this twentieth day of April, one thousand eight hundred and twenty.

JAMES N. BARKER, *Ald.*

Deposition, marked No. 6.

The deposition of George Heyl, of the city of Philadelphia, state of Pennsylvania, notary public for the Commonwealth of Pennsylvania, in and for

270.

the said city, taken before Robert Wharton, mayor of the city of Philadelphia, in the State House, on this seventeenth day of April, in the year of our Lord one thousand eight hundred and twenty-two, in four suits depending in the circuit court of the United States for the seventh circuit and district of Kentucky, wherein Stephen Sicard is plaintiff, and in one of which Jesse Davis, &c. are defendants; in another of which John Cecil, &c. are defendants; in another of which William Morgan, &c. are defendants; and in the fourth of which Jesse Davis, &c., tenants, &c. are defendants. The said George Heyl, being of the age of fifty years and upwards, and by me carefully examined and cautioned, and sworn to testify the whole truth, on his solemn oath deposeth and saith: that he was called on in his official capacity, on the seventeenth day of January, A. D. 1803, to certify and attest three several copies of original deeds, one a copy of a deed from Joseph Phillips to Benjamin Stephens, dated the 16th day of October, 1797, one of a deed from Benjamin Stephens to Samuel R. Marshall, dated 25th day of December, 1797, and the third of a deed from Samuel Robert Marshall and Rachael his wife, to Stephen Sicard, dated the 25th day of May, 1798, all for a certain tract or parcel of land, lying and being in the county of Jefferson, now Nelson county, in Virginia, now Kentucky, on the north bank of Chaplin's fork, containing six thousand six hundred and eighty acres of land, and that the said George Heyl did, at the request of Stephen Sicard, the last above mentioned grantee, examine and compare the said three several copies with the original deeds submitted to him by the said Stephen Sicard for that purpose, and found them to be true and faithful copies of the same, all which he certified under his hand and seal of office; that the said deeds with which he compared the said copies appeared to him, in every respect, original, fair, and genuine copies, the parchment, ink, signatures, &c., wearing that aspect. That the said Stephen Sicard told him, at the time, that his motive for desiring notarial copies of said originals, was, that he was going to send said originals to Kentucky to be recorded: that the said deponent had a knowledge of the signature of Hilary Baker, the mayor of the city, before whom they were proved, and of the seal of the city, and believed them genuine: That in the spring of the year 1818, the said Stephen Sicard again called on him, and took his deposition before alderman Douglas, at his (the alderman's office) in this city, to the above facts, to which deposition were annexed the said three notarial certified copies and a mandate from the seventh circuit court of the United States for the Kentucky district to the said Douglas, to take the same, all of which this deponent understood were transmitted to the said court; and that the annexed two copies of deeds so certified by the clerk of said court, to the best of his knowledge and belief, are copies of said originals: that he is neither attorney nor counsel for either party in either suit named, nor interested in any way in them, and further this deponent saith not.

GEORGE HEYL, *formerly George Heyl, jr.*

Sworn to before me, the 17th day of April, 1822.

CITY OF PHILADELPHIA, *sct.*

I, Robert Wharton, mayor of the city of Philadelphia aforesaid, in the state of Pennsylvania, do hereby certify, that the foregoing deposition was taken before me, as in the preamble specified, being entirely written and subscribed by the witness in my presence. I further certify that I am not

attorney or counsel for either party, nor interested in either of the suits named: that none of the defendants reside, nor have any agent known to me, within one hundred miles of the place of taking this deposition; the cause of taking which is, that the witness resides more than one hundred miles from the place of holding the court in which the suits are depending.

In witness whereof, I have hereunto set my hand, and caused the seal of the city to be affixed, the day and year within mentioned.

ROBERT WHARTON, *Mayor.* [L. S.]

Deposition, marked No. 9.

STATE OF NEW JERSEY, CITY OF TRENTON, *ss.*

The deposition of George Rozell, coachmaker, of the said city of Trenton, in the state of New Jersey, taken at the office of Robert McNeeley, Esq., mayor of the said city, in four suits, &c., pending in the circuit court of the United States for the seventh circuit and district of Kentucky, and in one of which Jesse Davis, &c. are defendants; in another of which John Cecil, &c. are defendants; in another of which William Morgan, &c. are defendants; and in the fourth of which Jesse Davis, &c., tenants, &c., are defendants. The said George Rozell being of the age of 56 years, and by me carefully examined and cautioned, and sworn to testify the whole truth, deposeth and saith: That he is not attorney or counsel for either party in any of the above named suits, nor in any way interested in either of them: that this deponent, in early life, lived in the township Maidenhead, county of Hunterdon, and state of New Jersey, in which township Col. Joseph Phillips then resided: that the said Joseph Phillips died there on or about twenty years ago; that he left children as follows, to wit, Doctor Joseph Phillips, one daughter named Elizabeth, wife of Elias Phillips, Esq., both deceased, and left issue, two sons and two daughters, Ruth Phillips remaining unmarried, and the wife of William Vanhart; and the said Joseph Phillips left other issue as follows: Mary, who married major John Phillips, Frances, who married William T. Phillips, and Martha Phillips remaining single, and Abigail, the late wife of Edward Yard, Esq.: that the said doctor Joseph Phillips, and all the daughters but the said Abigail, are, as he believes, still living: that said Abigail left issue by her said husband, who are minors, the oldest at most twelve years or under: that the said Col. Joseph Phillips and Benjamin Stephens were surveyors, and this deponent understands they were in the practice of locating and otherwise taking up land in what is here called the western country.

GEORGE ROZELL.

Sworn and subscribed at the said city of Trenton, this 15th day of April, 1822, before

ROBERT McNEELEY, *Mayor of Trenton.*

CITY OF TRENTON, *sc.*

I, Robert McNeeley, mayor of the said city of Trenton, in the state of New Jersey, do hereby certify, that the foregoing deposition was taken before me, as in the preamble specified, being entirely written by me in the presence of the witness. I further certify that I am not attorney or counsel for either party, nor interested in either of the suits named; that none of the defendants reside, nor have any agent known to me, within one hundred

271.

miles of the place of taking this deposition; the cause of taking which is, that the witness resides more than one hundred miles from the place of holding the court in which the said suits are pending. In witness whereof, I have hereunto set my hand and caused the seal of the said city to be affixed, the said fifteenth day of April, in the year of our Lord 1822.

ROBERT McNEELEY, *Mayor of Trenton.* [L. S.]

Deposition, marked No. 9.

The deposition of Benjamin Tucker, of the city of Philadelphia, taken before John Hallowell, president of the court of common pleas in and for the first judicial district of the Commonwealth, consisting of the city and county of Philadelphia, at his house, southeast of fifth and chesnut streets, in the said city of Philadelphia, on the 16th day of April, in the year of our Lord 1823, in four suits pending in the circuit court of the United States for the seventh circuit and district of Kentucky, wherein the lessee of Stephen Sicard and others is plaintiff, and in one of which Jesse Davis, &c. are defendants; in another of which John Cecil, &c. are defendants; in another of which William Morgan, &c. are defendants; and in the fourth of which Jesse Davis, &c., tenants, &c., are defendants. The said Benjamin Tucker, being of the age of fifty-four years, and by me carefully examined and cautioned, and affirmed to testify the whole truth, being a member of the society of friends, sometimes called Quakers, and conscientiously scrupulous of taking an oath, on his solemn affirmation deposeth and saith: That he is not attorney or counsel for either party in the above named suits, nor interested in any way in either of them. That he was intimately acquainted with the late Stephen Sicard, of the city of Philadelphia, from the year 1797, inclusive, down to the day of his death, and can well recollect his residence during the said period; that the said Stephen Sicard, during the whole of said period, in the said city of Philadelphia and its vicinage, say within fourteen miles, and that he is well satisfied that the said Stephen was never in the State of Kentucky during the said period, nor has he any reason to believe, from any circumstance, that he was ever in that State at all: that the said Stephen died in February of the last year in the said city of Philadelphia; and further this deponent saith not.

BENJAMIN TUCKER.

I, John Hallowell, president judge of the court of common pleas in and for the first judicial district of the Commonwealth of Pennsylvania, consisting of the city and county of Philadelphia, do hereby certify, that the foregoing deposition was taken before me, as in the preamble to the said deposition is particularly specified, being entirely written and subscribed by the witness in my presence. And I further certify that I am not attorney or counsel for either party, nor interested in either of the suits named; that none of the defendants reside, nor have any agent known to me, within one hundred miles of the place of taking this deposition; the cause of taking which is, that the witness resides more than one hundred miles from the place of holding of the court in which the suits are pending.

JOHN HALLOWELL.

Recorded certificate, marked No. 10.

PHILADELPHIA, *8th mo. 30th*, 1821.

I hereby certify, that, agreeably to the record kept by me, Benjamin Powell was buried in Friend's burying ground on Mulberry street, Philadelphia, fourth month first, 1820.

ELIHU PICKERING, *Recorder of births and burials, appointed by the monthly meeting of Friends of Philadelphia, for the northern district.*

Record of deeds from court of appeals, with Clerk's certificate.

This indenture, made this sixteenth day of October, in the year of our Lord one thousand seven hundred and ninety-seven, between Col. Joseph Phillips, of the township of Maidenhead, in the county of Hunterdon, in the state of New Jersey, of the one part, and Benjamin Stephens, of the city of Philadelphia, in the Commonwealth of Pennsylvania, of the other part, witnesseth: that the said Joseph Phillips, for and in consideration of one dollar, and other good causes me thereunto moving, do grant, bargain, sell, and convey unto the said Benjamin Stephens, and his heirs and assigns, all that certain tract or parcel of land, lying and being in the county of Nelson, and State of Kentucky, on the north side of Chaplin's fork, adjoining Wm. Kincheloe's four hundred acre survey, Messrs. Ramsey and Coxe's, and others, and bounded as follows, to wit: beginning at three beeches standing on the north bank of said Chaplin's fork, being also southwest corner of Ramsey and Coxe's 21,000 acre survey, running thence north 560 poles, with their line, to two beeches and a hickory; thence west 1,467 poles to two beeches; thence north 181 poles to a sugar tree and beech; thence west 380 poles to an elm and beech; thence south 180 poles to a beech and dogwood; thence east 20 poles to a sugar tree and dogwood, northeast corner to Kincheloe's 400 acre survey; thence south 253 poles, with the lines of said survey, to two honey locusts; thence west 253 poles to an elm and beech; thence north 253 poles to three beeches, northwest corner to said survey; thence west 20 poles to three beeches; thence south 980 poles to a sugar tree, beech, and poplar, on the north bank of Chaplin's fork; thence up said fork along the meanders thereof, and binding thereon, to the beginning, containing six thousand six hundred and eighty acres of land, (which said tract of land was granted by patent to Joseph Phillips by Patrick Henry, Governor of the Commonwealth of Virginia, on the sixth day of June, one thousand seven hundred and eighty-six, reference thereto being had may more fully appear,) together with all and singular the ways, waters, water courses, houses, and appurtenances whatsover thereunto belonging, or in any wise appertaining, of, in, and to the same, and every part and parcel thereof, and also all the estate of him, the said Joseph Phillips, either in law or equity, of, in, and to the same; to have and to hold all the said premises unto the said Benjamin Stephens, his heirs and assigns, for ever: and the said Joseph Phillips, his heirs, executors, and administrators, covenants with the said Benjamin Stephens, his heirs and assigns, that the said Joseph Phillips doth hereby grant all the hereby granted premises, and that he, the said Benjamin Stephens, his heirs and assigns, shall hold and enjoy the said premises without the lawful let or eviction of him, the said

272.

Joseph Phillips, his heirs or assigns, or any person or persons whatsoever, lawfully claiming by, from, or under him, or them, or any of them. In witness whereof, the said Joseph Phillips hath to these presents set his hand and seal the year first above written.

JOSEPH PHILLIPS, [SEAL.]

Sealed and delivered in presence of.

Note.—The words "he the said Joseph Phillips doth hereby grant all the," in the fifth line from the bottom, were written on an erasure before the execution of these presents.

JOSEPH SPENCER,
SAMUEL ROBERT MARSHALL,
JOHN PHILLIPS.

Received, the day of the date hereof, the full consideration money for the above deed. Witness my hand,

JOSEPH PHILLIPS.

JOSEPH SPENCER,
SAMUEL ROBERT MARSHALL,
JOHN PHILLIPS.

CITY OF PHILADELPHIA, *sct.*

On the eighth day of June, anno Domini one thousand seven hundred and ninety-eight, before me, Hilary Baker, mayor of the said city of Philadelphia, in the Commonwealth of Pennsylvania, personally appeared Joseph Spencer of the said city, merchant, who, being sworn, deposeth and saith: that he saw Joseph Phillips, the grantor in the above written indenture named, sign, seal, and, as his act and deed, deliver the above written indenture. That the name Joseph Spencer, thereunto subscribed as witness to the signing, sealing, and delivery thereof, is of his, the deponent's, proper hand writing, and that he also saw Samuel Robert Marshall and John Phillips severally subscribe their respective names thereunto, as witnesses to the signing, sealing, and delivery thereof, as aforesaid.

In testimony whereof, I, the mayor aforesaid, have subscribed my name, and caused the seal of the city to be affixed to these presents, the day and year aforesaid.

HILARY BAKER, *Mayor.* [L. S.]

STATE OF KENTUCKY, *sct.*

I, Achilles Sneed, Clerk of the court of appeals for the state aforesaid, being duly authorized by law to receive and admit to record deeds and other writings in my office, do hereby certify that the foregoing deed, with the testimonials thereunto annexed, were produced to me in my office in Frankfort, on the twenty-third day of April, 1803, and that the same are truly recorded.

In testimony whereof, I have hereto subscribed my name, and affixed my seal of office, the day and year aforesaid.

ACHILLES SNEED, *C. C. A.*

A copy: Teste,

A. W. WALLER, *D. C. for Achilles Sneed, C. C. A.*

Stephens to Marshall and ux., deed, to wit.

This indenture, the twenty-fifth day of December, in the year of our Lord one thousand seven hundred and ninety-seven, between Benjamin Stephens, of the city of Philadelphia, and county of Philadelphia, in the State of Pennsylvania, of the one part, and Samuel Robert Marshall and Rachael his wife, of the same place, county, and Commonwealth of Pennsylvania, of the other part, witnesseth: that the said Benjamin Stephens, for and in consideration of the just and full sum of five shillings, as well as for natural affection and divers other good causes and considerations me thereunto moving, hath granted, bargained, sold, released and confirmed, and by these presents doth grant, bargain, sell, release and confirm, unto them, the said Samuel Robert Marshall and Rachael his wife, their heirs and assigns, for ever, all that certain tract or parcel of land, situate, lying and being in the county of Nelson, late part of Jefferson county, State of Kentucky, late part of Virginia, which said tract of land is butted and bounded as followeth, to wit: beginning at William Kincheloe's 400 acre survey, Messrs. Ramsey and Coxe's and others, and at three beeches on the north bank of Chaplin's fork, being also southwest corner of Ramsey and Coxe's 21,000 acres survey, running thereon north 560 poles, with their line, to two beeches and a hickory; thence west 1,467 poles to two beeches; thence north 181 poles to a sugar tree and beech; thence west 380 poles to an elm and beech; thence south 181 poles to a beech and dogwood; thence east 20 poles to a sugar tree and dogwood, north east corner to Kincheloe's 400 acre survey; thence south 253 poles, with the lines of said survey, to two honey locusts; thence west 253 poles to an elm and beech; thence north 243 poles to three beeches; thence south 980 poles to a sugar tree, beech, and poplar, on the north bank of Chaplin's fork; thence up said fork along the meanders thereof, and binding thereon, to the beginning, containing six thousand six hundred and eighty acres, (which said land was granted by the State of Virginia, under the hand and seal of their then Governor, Patrick Henry, on the 6th day of June, 1786, and conveyed by the said Governor to Joseph Phillips and his heirs, and he, by his deed, bearing date the 16th day of October, 1797, conveyed the same to Benjamin Stephens, reference to said deed and patents being had may more fully and at large appear,) together with all and singular the ways, waters, water courses, mines, minerals, rights, privileges, and appurtenances thereunto belonging, or in any wise appertaining; as also all the estate, right, claim, and demand whatsoever, of him, the said Benjamin Stephens, and his heirs in law and equity, of, in, and to the same; to have and to hold all the said premises, hereby granted premises, with the appurtenances, unto the said Samuel Robert Marshall and Rachael his wife, their heirs and assigns, to their only proper use and behoof, for ever; and the said Benjamin Stephens and his heirs, all the said hereby granted premises, hereby granted with the appurtenances unto the said Robert Marshall and Rachael his wife, their heirs and assigns, against him, the said Benjamin Stephens and his heirs, and against all and every other person having or claiming any estate, (except two hundred acres) right or interest therein, shall warrant and for ever defend. In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year first above written.

BENJAMIN STEPHENS, [SEAL.]

The two hundred acres reserved adjoins William Kincheloe's on the east.
Sealed and delivered in presence of us:

A. VANCLEVE, Jr.,
BENJAMIN POWELL.

Received, the day of the date hereof, the full consideration money of the said Samuel Robert Marshall and Rachael his wife, being in full for the above mentioned deed.

BENJAMIN STEPHENS.

Witness at signing:
A. VANCLEVE, Jr.,
BENJAMIN POWELL.

CITY OF PHILADELPHIA, *ss.*

On the fifteenth day of June, anno Domini one thousand seven hundred and ninety-eight, before me, Hilary Baker, mayor of said city of Philadelphia, in the Commonwealth of Pennsylvania, personally appeared Aaron Vancleve, jr., of the said city, who, being duly sworn, deposeth and saith, that he saw Benjamin Stephens, the grantor in the above written indenture named, sign, seal, and, as his act and deed, deliver the above written indenture. That the name Aaron Vancleve, thereunto subscribed as a witness to the signing and sealing thereof, is of his, the said deponent's, proper hand writing, and that he saw Benjamin Powell subscribe his name as witness to the sealing and delivery thereof, as aforesaid.

In testimony whereof, I, the mayor aforesaid, have subscribed my name, and caused the seal of the said city to be affixed to these presents, the day and year aforesaid.

HILARY BAKER, *Mayor.* [L. S.]

STATE OF KENTUCKY, *sct.*

I, Achilles Sneed, Clerk of the court of appeals for the state aforesaid, being duly authorized by law to receive, admit, and record deeds and other writings in my office, do hereby certify, that the foregoing deed, with the testimonials thereto annexed, was produced to me in my office in Frankfort, on the 23d day of April, 1803, and that the same are truly recorded.

In testimony whereof, I have hereunto subscribed my name, and affixed my seal of office, the day and year aforesaid.

ACHILLES SNEED, *C. C. A.*
A copy: Teste. A. W. WALLER, *D. C. for Achilles Sneed, C. C. A.*

Marshall and ux. to Sicard, deed, to wit:

This indenture, made the twenty-fifth day of May, in the year of our Lord one thousand seven hundred and ninety-eight, between Samuel Robert Marshall, of the city and county of Philadelphia, in the Commonwealth of Pennsylvania, and Rachael his wife, of the one part, and Stephen Sicard, of the same county and Commonwealth, of the other part, witnesseth: that the said Samuel Robert Marshall and Rachael his wife, for and in consideration of the just and full sum of sixteen hundred and twenty dollars, to them in hand well and truly paid, the receipt whereof is hereby acknowledged, and themselves truly satisfied, contented, and paid, hath granted, bargained,

sold, released, and confirmed, and, by these presents, doth grant, bargain, sell, release and confirm, unto him, the said Stephen Sicard, all that tract or parcel of land, lying and being in the county of Jefferson, now Nelson county, in Virginia, now Kentucky, which said tract was granted by patent, under the hand and seal of Patrick Henry, then Governor of Virginia, which said patent bears date the 6th day of June, 1786, and was granted unto Joseph Phillips, and he, by deed bearing date the 16th day of October, 1797, conveyed the same to Benjamin Stephens, and he, by deed bearing date the 25th day of December, 1797, conveyed the same to Samuel Robert Marshall and Rachael his wife, all which, reference thereunto being had, may more fully and at large appear; together with all and singular the ways, waters, water courses, mines, minerals, woods, and all and every appurtenance thereunto belonging, or in any wise appertaining: beginning at three beeches standing on the north bank of Chaplin's fork, being also southwest corner of Ramsey and Coxe's 21,000 acre survey; thence north 560 poles, with their line, to two beeches and a hickory; thence west 1,467 poles to two beeches: thence north 181 poles to a sugar tree and beech; thence west 380 poles to an elm and beech; thence south 181 poles to a beech and dogwood; thence east 20 poles to a sugar tree and dogwood, northeast corner to William Kincheloe's 400 acre survey; thence south 253 poles, with the lines of said survey, to two honey locusts; thence west 253 perches to an elm and beech; thence north 253 perches to three beeches, northwest corner to said survey; thence west 20 poles to three beeches; thence south 980 poles to a sugar tree, beech, and poplar, on the north bank of Chaplin's fork; thence up said fork along the meanders thereof, and binding thereon, to the beginning; containing six thousand six hundred and eighty acres of land: to have and to hold all the said premises hereby granted, with the appurtenances, unto the said Stephen Sicard, his heirs and assigns, to his and their only proper use and behoof, for ever; and the said Samuel Robert Marshall and Rachael his wife, their heirs, all the said tract of land and premises hereby granted, with the appurtenances, unto the said Stephen Sicard, his heirs, executors, administrators and assigns, against him, the said Samuel Robert Marshall and Rachael his wife, their heirs, and against all and every person or persons lawfully claiming or having any estate, right, or interest therein, shall and will warrant and for ever defend from, by, and under them.

In witness whereof, the parties to these presents have hereunto interchangeably set their hands, and affixed their seals thereto, dated the day and year first above written.

SAMUEL ROBERT MARSHALL, [SEAL.]
RACHAEL MARSHALL, [SEAL.]

Sealed and delivered in presence of us:

A. VANCLEVE, Jr.
BENJAMIN POWELL.

There are two hundred acres of this land reserved, which are situated next to William Kincheloe's 400 acres on the east side.

Received, the day of the date of the within indenture, of the above Stephen Sicard, the full consideration money as above mentioned.

SAMUEL ROBERT MARSHALL.

Witness—A. VANCLEVE, Jr.,
BENJAMIN POWELL.

CITY OF PHILADELPHIA, *ss.* 274.

Before me, Hilary Baker, mayor of the city of Philadelphia, came Samuel Robert Marshall and Rachael his wife, the grantors above named, and acknowledged the above indenture to be their act and deed, and desired the same to be recorded as such; and the woman being examined apart from her husband, acknowledged that she signed the same of her own free will and accord, and that without the threats of her husband or any other person.

In testimony whereof, I, the mayor, have hereunto set my hand, and caused the seal of the mayoralty of the said city to be affixed, the 19th day of July, in the year of our Lord 1798.

HILARY BAKER, *Mayor.* [L. S.]

STATE OF KENTUCKY, *sct.*

I, Achilles Sneed, Clerk of the court of appeals for the state aforesaid, being duly authorized by law to receive, admit, and record deeds and other writings in my office, do hereby certify, that the foregoing deeds, with the testimonials thereto annexed, was produced to me, in my office in Frankfort, on the 23d day of April, 1803, and that the same is truly recorded.

In testimony whereof, I have hereunto subscribed my name and affixed my seal of office, the day and year aforesaid.

ACHILLES SNEED, *C. C. A.* [L. S.]

KENTUCKY, *sct.—Clerk's office, court of appeals.*

In testimony whereof, that the foregoing pages contain a true copy of the deed, and testimonials thereon endorsed, from Samuel R. Marshall and wife to Stephen Sicard, I have hereunto set my name, and affixed my seal of office, this 1st day of February, 1823.

ACHILLES SNEED, *C. C. A.*

Instructions, marked I.

1st. That the plaintiff has given no evidence to support the first count upon the demise of Sicard, and none to support the demise from any of the other lessors, except such as are heirs of Joseph Phillips, the patentee.

2d. That, if the jury find from the evidence that the patents of Joseph Phillips to Wm. Loving do interfere and lap, as represented on the connected plat, and that the defendants and those under whom they hold, did enter claiming under said Loving's survey, and took the first possession within the said interference, the said patent of Joseph Phillips being (at the date of such entry and possession taken under Loving's patent) unoccupied by any person, holding or claiming under said Phillips's patent, then, and in that case, the possession of the defendants so taken, was not limited to their actual enclosure, but was co-extensive with the boundaries by which they claimed.

3. That, if the jury find from the evidence that the possession of the lands in controversy was taken in the lifetime of Joseph Phillips, the ancestor of the lessors of the plaintiff, and adversely to said Phillips, and that the defendants, and those under whom they hold, have continued to hold adversely to said Phillips, the ancestor, and his heirs ever since, and for more than twenty years before the 17th day of January, 1822, when the second count in the declaration was filed, and shall moreover find that said ancestor, Joseph Phillips, died more than ten years before the said 17th day

of January, 1822, when the second count was filed, then the said lessors, the heirs of Joseph Phillips, are barred by the statute of limitations.

UNITED STATES OF AMERICA, } *sct.*
Seventh circuit, Kentucky district, }

I, John H. Hanna, Clerk of the seventh circuit court of the United States of America, in and for the district of Kentucky, do hereby certify, that the foregoing pages contain a full, true, and complete transcript of the record and proceedings in the cause therein mentioned.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, this ninth day of March, in the year of our Lord one thousand eight hundred and thirty, and in the 54th year of the independence of the United States.

[SEAL OF THE COURT.] JOHN H. HANNA.

278.

SUPREME COURT OF THE UNITED STATES.

No. 34.

NATHANIEL COX, NATHANIEL AND JAMES DICK, PLAINTIFFS IN ERROR,

VERSUS

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT U. S. FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print
Petition of district attorney United States	1	2
Bond	3	2
Citation	5	3
Answer of Nathaniel Cox	8	5
Order of court appointing *curator ad hoc* of Mrs. Todd	9	5
Supplemental answer of Nathaniel Cox	9	5
Answer of Nathaniel and James Dick	10	6
Order of court overruling the plea for a division of the action	11	6
Verdict for plaintiffs	12	7
Bill of exceptions by Nathaniel Cox	12	7
Motion in arrest of judgment	14	8
Motion overruled	16	8
Judgment	16	9
Petition of appeal by Nathaniel Cox	17	9
Appeal bond	18	10
Writ of error	20	10
Petition of appeal by Nathaniel and James Dick	21	11
Appeal bond	22	11
Writ of error	24	12
Citations	25-6	12
Clerk's certificate	28	13

District Court of the United States, Eastern District of Louisiana.

Be it remembered, that on the 19th day of October, in the year of our Lord eighteen hundred and twenty-five, into the district court of the United States within and for the eastern district of Louisiana, came the United States of America, by John W. Smith, Esquire, their attorney, within and for the said district, and filed the following petition:

To the honorable Thomas Bolling Robertson, judge of the court of the United States within and for the eastern district of Louisiana:

The petition of the United States, by their attorney, prosecuting within and for said district, respectfully states, that Joseph H. Hawkins, late of New Orleans, navy agent of the United States, now deceased, John Dick, late of New Orleans, now deceased, and Nathaniel Cox, of the same place, on the tenth day of March, in the year of our Lord 1821, were indebted to the United States in the sum of twenty thousand dollars, for the amount of their obligation in writing, sealed with their seals, for the said sum, bearing date the said day and year, and payable, jointly and severally, by them, their heirs, executors, and administrators, as will appear by a certified copy thereof hereunto annexed. To which said obligation, a condition was annexed, wherein it was provided, that if the said Joseph H. Hawkins should regularly account, when thereunto required, for all public moneys that might be received by him, from time to time, and for all public property committed to his care, with such person or persons, officer or officers of the General Government of the United States, as should be duly authorized to settle and adjust his accounts, and should moreover pay over, as he might be directed, any sum or sums that might be found due to the United States upon any such settlement or settlements, and should also faithfully discharge, in every respect, the trust reposed in him, then the said obligation should be void, else it should remain in force.

And the United States further state, that the said Joseph H. Hawkins did not, in his lifetime, regularly account, as aforesaid, for all public moneys received by him, from time to time, and for all public property committed to his care; and did not pay over, as aforesaid, any sum or sums of money due to the United States as aforesaid; and did not faithfully discharge, in every respect, the trust reposed in him, as aforesaid; but did, at his death, remain indebted to the United States in a large balance of money, to wit, the sum of fifteen thousand five hundred and fifty-three dollars eighteen cents, for moneys, from time to time, since the date of the said obligation, received from the United States, as navy agent as aforesaid; by reason of all which, the condition of the said obligation hath become broken, and the said debt become due; wherefore they pray process of summons against the legal representatives of the said Joseph H. Hawkins, deceased, and of the said John Dick, deceased, and against the said Nathaniel Cox; and after due proceedings had, that judgment may be rendered against them for the said debt, with interest and costs.

J. W. SMITH,
Attorney U. S. eastern district of Louisiana.

Copy of bond annexed.

Know all men by these presents, that we, Joseph H. Hawkins, as principal, and John Dick and Nathaniel Cox, as securities, are held and firmly bound unto the United States of America, in the sum of twenty thousand dollars, current money of the United States, to be paid to the said United States, for which payment, well and truly to be made and done, we bind ourselves, and each of us, our and each of our heirs, executors, and administrators, in the whole and for the whole, jointly and severally, firmly by these presents. Sealed with our seals, and dated this tenth day of March, anno Domini 1821.

276.

The condition of the above obligation is such, that if the above bonded Joseph H. Hawkins shall regularly account, when thereunto required, for all public moneys received by him, from time to time, and for all public property committed to his care, with such person or persons, officer or officers of the Government of the United States, as shall be duly authorized to settle and adjust his accounts, and shall, moreover, pay over as he may be directed any sum or sums that may be found due to the United States upon any such settlement or settlements, and shall also faithfully discharge, in every respect, the trust reposed in him, then the above obligation to be void and of no effect, otherwise to remain in full force and virtue.

JOS. H. HAWKINS, [L. S.]
JOHN DICK, [L. S.]
NATHANIEL COX, [L. S.]

Signed, sealed, and delivered in the presence of
GEO. WELSH,
GEO. ROPER,
MOSES COX.

The sufficiency of the above sureties appears to me unquestionable.

JOHN W. SMITH,
Attorney of the U. S. for the Louisiana district.

NEW ORLEANS, *March 10th*, 1821.

I hereby certify, that the above is a true and faithful transcript from the original on file in this department.

CHAS. HAY, *Chief Clerk.*

NAVY DEPARTMENT, 30*th May*, 1825.

I hereby certify, that Charles Hay is now, and was at the time of signing the above certificate, chief clerk in the Navy Department of United States, and that full faith can be given thereunto.

SAML. L. SOUTHARD.

NAVY DEPARTMENT, 30*th May*, 1825.

Whereupon the following citations were issued from the clerk's office, to wit:

Citation.

District Court of the United States for the Eastern District of Louisiana. The President of the United States to the Marshal of the Eastern District of Louisiana, or his lawful deputy, greeting:

You are hereby commanded to cite the legal representatives of J. H. Hawkins, deceased, the legal representatives of John Dick, deceased, and Nathaniel Cox, so that they be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans on the second Monday of December next, to answer to the complaint of the United States; and that they do file their defence or answer with the clerk of said court on or before the same, or judgment will be given against them by default, and have you then and there this writ.

Witness the honorable T. B. Robertson, judge of said court, at the city of New Orleans, this 20th day of October, 1825, and 50th year of the independence of the United States.

F. W. LEA, *Clerk.*

Upon which citation, the marshal made the following return, to wit:
Non est inventus, as to legal representatives of J. H. Hawkins, 15th December, 1825.

J. NICHOLSON, *Marshal.*

Citation.

District Court of the United States for the Eastern District of Louisiana.

The President of the United States to the Marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded to cite the legal representatives of J. H. Hawkins, deceased, the legal representatives of John Dick, deceased, and Nathaniel Cox, so that they be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans, on the second Monday of December next, to answer to the complaint of the United States; and that they do file their defence or answer with the clerk of said court on or before the same, or judgment will be given against them by default, and have you then and there this writ.

Witness the honorable T. B. Robertson, judge of said court, at the city of New Orleans, this 20th day of October, 1825, and 50th year of the independence of the United States.

F. W. LEA, *Clerk.*

Upon which citation, the marshal made the following return, to wit:

Received process of citation on the 20th October, 1825. Served on the legal representatives of John Dick, deceased, and returned into court on the 21st.

I. C. BATES, *Dep. Marshal.*

Citation.

District Court of the United States for the Eastern District of Louisiana.

The President of the United States to the Marshal of the Eastern District of Louisiana, or to his lawful deputy, greeting:

You are hereby commanded to cite the legal representatives of J. H. Hawkins, deceased, the legal representatives of John Dick, deceased, and Nathaniel Cox, so that they be and appear at the district court of the United States for the eastern district of Louisiana, to be holden in the city of New Orleans on the second Monday of December next, to answer to the complaint of the United States; and that they do file their defence or answer with the clerk of said court on or before the same, or judgment will be given against them by default; and have you then and there this writ.

Witness the honorable T. B. Robertson, judge of said court, at the city of New Orleans, this 20th day of October, 1825, and 50th year of the independence of the United States.

F. W. LEA, *Clerk.*

Upon which citation, the marshal made the following return, to wit:
Received on the 20th October. Served on Nathaniel Cox same day, and returned into court.

I. C. BATES, *Dep. Marshal.*

277.

And afterwards, to wit, on the 11th December, 1827, came Nathaniel Cox, by George Strawbridge, Esq., and filed the following answer, to wit:

THE UNITED STATES *vs.* Representatives of J. H. HAWKINS, et. al. } *United States' district court, eastern district of Louisiana.*

The separate answer of N. Cox to the petition of the United States, respectfully shows, that true it is he did sign the bond sued upon as surety of the late J. H. Hawkins, navy agent; but he denies that the sum of $15,553 18 is due by the sureties, as stated in the petition, but only $12,682 46, (twelve thousand six hundred and eighty-two dollars and forty-six cents;) for this, that since the decease of the said J. H. Hawkins, he has paid on his account, and been allowed in credits at the Treasury of the United States, the sum of $7,317 54, (seven thousand three hundred and seventeen dollars fifty-four cents;) deducting which from the amount of said bond, $20,000, leaves the aforesaid sum of twelve thousand six hundred and eighty-two dollars forty-six cents.

And this respondent further shows, that as between himself and his co-surety, he is entitled to a credit for this sum, $7,317 54, deducting which from the amount of $10,000, or one half the penalty of said bond, there will remain due by him the sum of $2,682 46, (two thousand six hundred and eighty-two dollars and forty-six cents;) and by his co-surety the remainder of the sum, viz: $10,000, which apportionment he prays may be made and allowed to him as against his co-surety, with all other and further relief which he may be entitled to.

STRAWBRIDGE.

And afterwards, to wit, on the 27th day of February, 1828, the following order of court was entered of record, to wit:

Monday, 27th February, 1828. The court met pursuant to adjournment: present, honorable T. B. Robertson.

Order of Court.

2,250.

THE UNITED STATES *vs.* representatives of HAWKINS, et. al.

On motion of the district attorney, and on giving the court to understand that Mrs. Todd, a surviving sister and one of the heirs of John Dick, deceased, resides out of the district, to wit, in the State of Virginia, ordered that Levi Peirce, Esq., attorney of Nathaniel and John Dick, two of the heirs of John Dick, deceased, be appointed curator *ad hoc* of the said Mrs. Todd herein.

And afterwards, to wit, on the third day of March, 1828, came the said Nathaniel Cox, by George Strawbridge, Esq., his attorney, and filed the following supplemental answer, to wit:

Supplemental answer of N. Cox.

The UNITED STATES *vs.* HAWKINS's representatives.

To the honorable T. B. Robertson, judge of the United States' district court, eastern district of Louisiana.

The supplemental answer of Nathaniel Cox to the petition of the United States in the above entitled suit, respectfully represents, that the succession

of his co-security, John Dick, is solvent and able to pay the amount of the debt therein claimed. He therefore demands that the United States divide their action by reducing their demand to the amount of the share and proportion due by each surety.

STRAWBRIDGE, *for deft. N. C.*

And afterwards, to wit, on the twentieth day of May, 1828, came Nathaniel Dick and James Dick, by their attorney, Levi Peirce, Esq., and filed the following answer, to wit:

The UNITED STATES
vs.
Representatives of J. H. HAWKINS, the representatives of J. Dick, and NATHANIEL COX.
} *United States' district court, eastern district of Louisiana.*

Nathaniel Dick and James Dick, being cited, come and answer to the petition of the United States, that no amicable demand has been made according to law, and that they are, therefore, not bound for any expenses of this suit; and they further answer, that they are two of three heirs of J. Dick, who have accepted the succession of said J. Dick, with benefit of inventory; the third heir being Sarah Dick, wife of J. Todd, of the State of Virginia, citizen; and that, therefore, they are in no event bound for more than two-thirds of any debt of said J. Dick; that the debt now claimed, they deny is in any manner due by the estate of John Dick, but should the same be proved, they say that they have not received more than four thousand dollars of the estate of J. Dick, and are liable for no more than two thousand dollars each, of which they pray judgment and trial by jury; and that they may be dismissed with, &c.

L. PEIRCE, *Attorney.*

And afterwards, to wit, on the 17th day of December, 1829, the following entry was made, to wit:

Answer of N. and J. Dick.

2,250.

The UNITED STATES
vs.
Representatives of HAWKINS, and others.
} *Demand to divide action.*

After hearing the arguments of counsel, the court took time to consider.

And afterwards, to wit, on the 19th day of December, 1829, the following order of court was entered of record, to wit:

Order of Court.

2,250.

The UNITED STATES
vs.
Representatives of HAWKINS, et. al.
} *Demand to divide action.*

The court having maturely considered the plea put in by Nathaniel Cox, one of the defendants, for a division of the action in this case, now order that the same be overruled.

278.

And afterwards, to wit, on the 2d day of January, 1830, the following entry was made, to wit:

Saturday, 2d January, 1830. The court met pursuant to adjournment: present, honorable Samuel H. Harper.

Verdict of the Jury.

2,250.

The UNITED STATES *vs.* representatives of HAWKINS, et. al.

On this day came the parties, by their attorneys, and thereupon came a jury, to wit, J. W. Zacharie, Jonathan Montgomery, Jean Gomjon, George Green, Louis Couvertier, Oliver Blineau, John Garnier, M. Prevost, A. Whiting, Minias Jacob, E. B. Hyde, and Daniel Goodman, who were sworn well and truly to try the issue joined between the parties, and who, after hearing the evidence, from their seats returned the following verdict, to wit: "Verdict for plaintiffs for twenty thousand dollars, being amount of bond. New Orleans, January 2, 1830.

J. W. ZACHARIE, *Foreman.*"

And on the trial of this cause, on the day and year aforesaid, the defendant, Nathaniel Cox, by his said attorney, George Strawbridge, Esq., took the following bills of exceptions, which were allowed, signed, and filed, to wit:

Bill of Exceptions.

United States' District Court, Eastern District of Louisiana.

The UNITED STATES *vs.* representatives of J. H. HAWKINS, late navy agent, the heirs of JOHN DICK, and NATHANIEL COX.

Be it remembered, that at the trial of this cause, this second day of January, one thousand eight hundred and thirty, the defendant, Nathaniel Cox, offered to prove, under the prayer of his answer, that his co-surety should be decreed to contribute in payment, according to their respective shares; that certain payments had been made in diminution of the balance of said Hawkins, since his death, and before the date of the transcript, produced in evidence by the district attorney by the said Cox; and for this purpose, offered in evidence, a certain transcript from the treasury books, duly certified; the introduction of said testimony was opposed by the counsel for the heirs of John Dick, his co-surety, on the ground that in this suit there could be no examination of the rights of the sureties as between themselves; which objection being sustained by the court, the testimony was rejected; whereupon the said defendant prayed this his bill of exceptions.

SAML. H. HARPER, [L. S.]

The UNITED STATES *vs.* representatives of HAWKINS, et. al.

And be it further remembered, that, at the same time, the defendant, N. Cox, also offered in evidence another transcript from the books of the treasury, duly authenticated, purporting to be a list of payments made and receipts taken, and passed at the Treasury of the United States, in the name of said Joseph H. Hawkins, since the 30th September, 1823, (it having been previously shown that the said Hawkins died on the first of October, 1823,) in support of the allegations in his answer, that he had paid the sum of

$7,317 54, since the decease of said Hawkins, in his capacity of surety; the introduction of said testimony was opposed by the attorney of the United States, on the ground that no credits could be allowed but such as had been presented at the treasury, and refused; which objection being sustained by the court, the evidence was refused; and the same defendant having further offered in evidence the account of said Joseph H. Hawkins, as navy agent, with the Bank of the United States, in this city, during the months of August and September, immediately preceding his death, in support of his said plea, the attorney for the United States objected to the introduction of the same, on the ground that the same could not be evidence against the United States; the court sustained, also, this objection, and overruled the testimony; and the said defendant, N. Cox, prayed this his bill of exceptions.

SAML. H. HARPER.

And afterwards, to wit, on the 15th day of January, 1830, came the defendants, N. and J. Dick, two of the heirs of John Dick, and filed the following motion in arrest of judgment, to wit:

Motion in arrest of judgment.

The UNITED STATES *vs.* Representatives of HAWKINS, representatives of J. DICK, and NATHL. COX. } *United States' district court.*

The attorney for James Dick and Nathaniel Dick, two of the heirs of John Dick, deceased, moves in arrest of judgment in this case, that there was not the number of parties required by law, the other heir not having filed any answer, or not being in court by judgment by default; that the judgment cannot be against two heirs for the whole amount due by John Dick, when it is on record, by motion of John W. Smith, then the United States' district attorney, that there is another heir, to wit, Sarah Todd, the motion of the said attorney being as follows, on the 27th February, 1828, as extracted from the record book: "On motion of the district attorney, and on giving the court to understand that Mrs. Todd, a surviving sister and one of the heirs of John Dick, deceased, resident out of the district, to wit, in the State of Virginia, ordered, that Levi Peirce, Esq., attorney of Nathaniel Dick and James Dick, two of the heirs of John Dick, deceased, be appointed *curator ad hoc*, of the said Mrs. Todd herein."

L. PEIRCE.

And afterwards, to wit, on the day and year last aforesaid, the following order was entered on record, to wit:

Friday, 15th January, 1830. The court met pursuant to adjournment: present, honorable Samuel H. Harper.

Order of Court.

2,250.

The UNITED STATES *vs.* representatives of HAWKINS, et. al.

After hearing the arguments of counsel in this case, it is ordered that the motion in arrest of judgment in this case be overruled.

And afterwards, to wit, on the 18th day of January, 1830, the following judgment was entered on record, to wit:

279.

Monday, 18th January, 1830. The court met pursuant to adjournment: present, honorable Samuel H. Harper.

Judgment.

2,250.

The UNITED STATES *vs.* representatives of HAWKINS, et. al.

The court having maturely considered the motion in arrest of judgment, now order that judgment be entered up, as of the 15th instant, against the estate of John Dick and Nathaniel Cox, jointly and severally, for the sum of twenty thousand dollars, with 6 per cent. interest from the 2d day of January, 1830, until paid, and costs of suit; and that judgment be entered up against Nathaniel Dick and James Dick for the sum of ten thousand dollars each, with 6 per cent. interest from 2d January, 1830, until paid, and the costs.

SAML. H. HARPER,
Judge United States.

And afterwards, to wit, on the 21st day of January, 1830, came the said Nathaniel Cox, by his attorney, George Strawbridge, Esq., and filed the following petition for a writ of error, to wit:

Petition of Appeal.

The UNITED STATES *vs.* representatives of HAWKINS, and others.

To the honorable S. Harper, judge of the district court for the eastern district of Louisiana.

The petition of N. Cox respectfully represents that there is error in the judgment lately rendered in this court, whereby he is aggrieved; wherefore he prays a writ of error.

GEO. STRAWBRIDGE, *for N. Cox.*

January 21, 1830.

Judge's Order.

Let the prayer of the petition be granted, upon the plaintiff in error giving bond in the sum of ten thousand dollars, with Joseph Thomas as security.

SAML. H. HARPER,
Judge United States.

And afterwards, to wit, on the day and year aforesaid, the following entry was made on the record, to wit:

Tuesday, 21st January, 1830. The court met pursuant to adjournment: present, honorable Samuel H. Harper.

2,250.

The UNITED STATES *vs.* representatives of J. H. HAWKINS, et. al.

The defendants, on the 20th instant, paid into court the sum of twelve thousand six hundred and eighty-two dollars forty-six cents, on account of judgment.

And afterwards, to wit, on the day and year aforesaid, the defendant, N. Cox, filed in the clerk's office, the following bond, to wit:

Bond.

United States of America, eastern district of Louisiana.

Know all men by these presents, that we, Nathaniel Cox, as principal, and Joseph Thomas, as security, are held and firmly bound unto the United States of America in the just and full sum of ten thousand dollars, for the payment whereof we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, sealed with our seals and dated at the city of New Orleans, this 21st day of January, one thousand eight hundred and thirty.

Whereas the above bounden Nathaniel Cox has this day filed a petition, praying that a writ of error may be allowed to him from a certain final judgment rendered against him in the suit of the United States *vs.* the heirs and representatives of Joseph H. Hawkins, the heirs and representatives of John Dick, and Nathaniel Cox, in the district court of the United States in and for the eastern district of Louisiana, on the 15th day of this present month of January, 1830:

Now the condition of the above obligation is such, that if the above bounden Nathaniel Cox shall prosecute his said writ of error to effect in the Supreme Court of the United States, and shall pay and satisfy whatever judgment may be rendered against him by the Supreme Court of the United States in the premises, then, and in that case, the above obligation is to be null and void, else to be and remain in full force and virtue.

NATHANIEL COX, [L. S.]
JOSEPH THOMAS, [L. S.]

Signed, sealed, and delivered in presence of
JAMES HERON, *witness.*

And afterwards, to wit, on the same day and year aforesaid, the following writ of error was lodged in the clerk's office, together with a copy thereof for the plaintiffs.

Writ of Error.

Court of the United States, eastern district of Louisiana.

The UNITED STATES *vs.* representatives of HAWKINS, et. al.

The President of the United States of America to the honorable S. H. Harper, judge of the district court of the United States for the eastern district of Louisiana.

Because, in the record and process, and also in the giving of judgment of the plaint which was in said court before you, between the United States of America and the heirs and representatives of J. H. Hawkins, the heirs and representatives of John Dick, and Nathaniel Cox, manifest error hath intervened, to the great damage of the said Nathaniel Cox, as we, from complaint, are informed; we being willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the party aforesaid in this behalf, do hereby command you that you do, distinctly and plainly, under the seal of the district court of the eastern district of Louisiana, send the record and process of the plaint aforesaid, with all things concerning them, and this writ, into the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the first Monday of August next, that the record and process aforesaid being in-

287.

spected, the said Supreme Court may cause to be done thereupon, for correcting said error, what of right, and according to the laws of the United States, ought to be done.

Witness the honorable John Marshall, Chief Justice of the United States, this 21st day of January, 1830, and 54th year of the independence of the United States.

F. W. LEA, *Clerk.*

And afterwards, to wit, on the 22d day of January, 1830, came the said Nathaniel Dick and James Dick, and filed the following petition for a writ of error, to wit:

Petition of N. and J. Dick.

The UNITED STATES *vs.* representatives of HAWKINS and others.

To the honorable the judge of the United States' district court for the eastern district of Louisiana.

The petition of Nathaniel Dick and James Dick, two of the heirs of John Dick, deceased, respectfully shows, that they complain of error in a certain final judgment rendered against them in your honorable court, at the suit of the United States against the representatives of Joseph H. Hawkins, and the representatives of John Dick, deceased, and Nathaniel Cox; wherefore they pray a writ of error, on giving security according to law, offering John Linton, of the city of New Orleans, therefor.

L. PEIRCE, *Attorney.*

Judge's Order.

Be it so: the plaintiffs in error giving bond, with the within named surety, in the sum of ten thousand dollars.

SAML. H. HARPER.

And afterwards, to wit, on the 25th day of January, 1830, the said Nathaniel and James Dick filed in the clerk's office, the following bond, to wit:

Bond of N. and J. Dick.

United States of America, eastern district of Louisiana.

Know all men by these presents, that we, Nathaniel Dick and James Dick, as principal, and John Linton, as security, are held and firmly bound unto the United States of America in the just and full sum of ten thousand dollars, for the payment whereof, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents; sealed with our seals, and dated at New Orleans, on the 25th day of January, one thousand eight hundred and thirty.

Whereas the above bounden James Dick and Nathaniel Dick have this day filed a petition, praying that a writ of error may be allowed to them from a certain final judgment rendered against them in the suit wherein the United States are plaintiffs, against the heirs and legal representatives of Joseph H. Hawkins, the heirs and legal representatives of John Dick, and Nathaniel Cox, defendants, in the district court of the United States for the eastern district of Louisiana, on the 15th day of this present month of January, 1830:

Now the condition of the above obligation is such, that if the above bounden James Dick and Nathaniel Dick shall prosecute their said writ of error

to effect in the Supreme Court of the United States, and shall pay and satisfy whatever judgment may be there rendered against them, then and in that case the above obligation is to be null and void, else to be and remain in full force and virtue.

NATHANIEL DICK, [L. S.]
JAMES DICK, [L. S.]
J. LINTON, [L. S.]

Signed, sealed, and delivered in presence of
L. PEIRCE.

And afterwards, to wit, on the said 25th day of January, 1830, the following writ of error was lodged in the clerk's office, together with a copy thereof for the plaintiffs.

Writ of Error.

Court of the United States, eastern district of Louisiana.

The UNITED STATES *vs.* representatives of HAWKINS, et. al.

The President of the United States of America to the honorable Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana.

Because, in the record and process, and also in the giving of judgment of the plaint which was in said court before you, between the United States of America and the heirs and representatives of J. H. Hawkins, the heirs and representatives of John Dick, and Nathaniel Cox, manifest error has intervened, to the great damage of Nathaniel Dick and James Dick, two of the heirs of said John Dick, as we, from complaint, are informed; we being willing that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the party aforesaid in this behalf, do hereby command you that you do, distinctly and plainly, under the seal of the district court of the eastern district of Louisiana, send the record and process of the plaint aforesaid, with all things concerning them, and this writ, into the Supreme Court of the United States, at the city of Washington, in the District of Columbia, on the first Monday of August next, that the record and process aforesaid being inspected, the said Supreme Court may cause to be done thereupon for correcting said error, what of right, and according to the laws of the United States, ought to be done.

Witness the honorable John Marshall, Chief Justice of the United States, this 25th day of January, 1830, and 54th year of the independence of the United States.

F. W. LEA, *Clerk.*

Citation.

To the United States of America, or their attorney, or agent, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, being the place of the sessions of said court, on the first Monday of August next, pursuant to the within contained writ of error, to show cause, if any there be, why the judgment rendered against Nathaniel Cox, as within mentioned, should not be reversed; and why the error complained of should not be corrected; and why speedy justice should not be done to the parties in that behalf.

28/.

Witness the honorable Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, having circuit court powers, at the city of New Orleans, in the State of Louisiana, this 29th day of January, 1830.

SAML. H. HARPER,
Judge U. S. for Louisiana.

Received, 30th January, 1830. Served copy of the within citation on John Slidell, Esq., United States' district attorney, on the same day.

OTIS F. BURLINGAME,
Deputy Marshal.

Citation.

To the United States of America, or to their agent or attorney, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, in the District of Columbia, being the place of the sessions of said court, on the first Monday of August next, pursuant to the within contained writ of error, to show cause, if any there be, why the judgment rendered against Nathaniel Dick and James Dick, as within mentioned, should not be reversed; and why the error complained of should not be corrected; and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Samuel H. Harper, judge of the district court of the United States for the eastern district of Louisiana, having circuit court power, at the city of New Orleans, in the State of Louisiana, this 29th day of January, 1830.

SAMUEL. H. HARPER,
Judge U. S. for Louisiana.

Received, 30th January, 1830. Served a copy of the within citation on John Slidell, Esq., United States' district attorney, on the same day.

O. F. BURLINGAME,
Deputy Marshal.

United States of America, eastern district of Louisiana.

I, Franklin W. Lea, clerk of the district court of the United States for the eastern district of Louisiana, do hereby certify that the foregoing transcript contains true and faithful copies of the record and process, together with all and singular the pleadings, and the original writs of error and citations, in the case wherein the United States of America are plaintiffs, and the representatives of Joseph H. Hawkins, deceased, the representatives of John Dick, deceased, and Nathaniel Cox, are defendants.

In testimony whereof, I have hereunto signed my name and affixed the seal of said court, at the city of New Orleans, on this thirtieth day of January, in the year of our Lord one thousand eight hundred and thirty, and in the 54th year of the independence of the United States.

F. W. LEA, *Clerk.*

Eastern District of Louisiana, ss.

I, Samuel H. Harper, judge of the district courts of the United States for Louisiana, do hereby certify, that Franklin W. Lea, who has certified the foregoing transcript, is now, and was at the time of doing so, clerk of the